AL-16-000-7122

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 04 2016

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable Cynthia Lummis
Chairman
Subcommittee on the Interior
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Lummis:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Committee's questions for the record following the March 16, 2016, hearing titled "Examining the Renewable Fuel Standard."

I hope this information is helpful to you and the members of the Committee. If you have further questions, please contact me or your staff may contact Matthew Davis in the EPA's Office of Congressional and Intergovernmental Relations at davis.matthew@epa.gov or at (202) 564-1267.

Sincerely,

Tristan Brown
Deputy Associate Administrator

Enclosure

cc: The Honorable Brenda Lawrence
Ranking Member, Subcommittee on the Interior

To: Christopher Grundler
Director, Office of Transportation and Air Quality
U.S. Environmental Protection Agency

From: Representative Cynthia Lummis
Chairman
Subcommittee on the Interior

Hearing: Subcommittee on the Interior Hearing titled, "Examining the Renewable Fuel Standard"

Date: March 16, 2016

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1. This past November was one of the few times in the history of the RFS program that a deadline was met when EPA released the numbers for 2016. However, the Agency was still extremely late in producing its 2014 and 2015 numbers. Why has the EPA repeatedly missed its statutory deadlines for releasing the final rules for blending requirements?

Response: The RFS program is complex, and this complexity has only grown as the statute's volume targets have increased. The magnitude of the statutory volumes for 2014 introduced new and challenging issues regarding RFS program implementation. We laid out those challenges in our November 29, 2013 proposal for the 2014 standards, which generated a substantial amount of input and dialogue. The process of responding to public comments and addressing the issues raised caused such a delay that by the time the proposal could be finalized, a re-proposal was appropriate.

2. Last November, EPA released the numbers for 2014, 2015, and 2016 at the same time. Will EPA continue to use this same methodology of releasing multiple years' requirements simultaneously?

Response: In the final rulemaking that the EPA issued on November 30, 2015, establishing the standards for 2014, 2015, and 2016, EPA set the standards effectively at what the market produced for 2014 and 2015, due to the fact that the EPA had not met the statutory deadlines for those years. This resulted in 3 years being finalized simultaneously. We do not anticipate this situation (i.e., needing to issue standards for multiple years due to missed years) will arise again, since it is our intention to stay on the statutory schedule in issuing subsequent annual rules establishing renewable volume obligations.

3. When does EPA plan to issue a final rule for the 2017 renewable fuel volumes?

Response: We are on track to issue the final rule for the 2017 standards (and the 2018 biomass-based diesel volume) by November 30, 2016.

4. What needs to happen for EPA to follow the law and release its final rules on time? Are there any legislative fixes that Congress can provide to help the EPA better administer the RFS and achieve the original goals of the program as intended by Congress?

Response: It is our intention to meet the statutory deadlines for issuing the annual volume standards under the RFS program for 2017 and future years.

5. When the EPA repeatedly misses its deadlines for releasing final volumes for the RFS and issues retroactive mandates as it has several times since the creation of the program, how can the regulated community plan their compliance and deal with this uncertainty?

Response: As described in the 2010 final rule which created the current RFS program, the fact that EPA has missed a statutory deadline for setting the annual standards does not excuse the EPA from the obligation to set standards. However, in such cases, the EPA has a responsibility to consider the capabilities of the market given the tardiness of the standards, and to adjust the applicable standards accordingly if appropriate. In 2010 and 2013, for instance, our assessment of the market led us to conclude that the statutory volume targets for advanced biofuel and total renewable fuel could be achieved despite the fact that the statutory deadlines had been missed. For 2014 and 2015, however, our assessment of the market led us to conclude that the statutory volume targets for these fuel types could not be achieved, and we adjusted them appropriately by using the waiver authority provided in the law. The volume requirements for 2014 for all fuel types were based on a determination of what the market actually achieved in the absence of RFS standards, not what it might have achieved had the standards been in place earlier. This was also largely the case for 2015, but the volume requirement was based in part on a projection of what the market would accomplish on its own in the few months of 2015 for which data were not available at the time of the rulemaking.

6. Why do you believe it has been so difficult for advanced and cellulosic biofuels to achieve success even though there has been a mandate to aid their development for about 10 years now?

Response: There are always significant challenges in developing a new technology and bringing it to market, and this has certainly been the case for advanced and cellulosic biofuels. There are a number of factors that have affected the availability of advanced and cellulosic biofuels in the United States, including the need for advanced research and development to make these fuels economical, high capital costs for construction of production facilities (at a time when the economy was slow and investment dollars in short supply), the availability of affordable feedstocks and the need for new businesses and business relationships to be formed to bring them to market, and in some cases insufficient infrastructure for increased distribution and use of these fuels. For cellulosic biofuels in particular, the primary challenge has been the development of technology that can reliably and economically produce cellulosic biofuel at commercial scale. While the RFS program has incentivized the investment of significant resources in the development of cellulosic biofuel production technologies from both government and private entities, production of cellulosic biofuel has remained far below the ambitious targets established by Congress in the Energy Independence and Security Act (EISA).

7. Why does the EPA continue to miss the cellulosic volumes by such large margins? Is the EPA taking any steps to fix its inflated estimates that it continues to make year after year?

Response: Projecting the performance of a nascent industry is inherently difficult. In the early years of the RFS program, very few facilities were in a position to potentially produce cellulosic biofuel, and these were mainly technology demonstration facilities, not commercial scale production facilities. As a result, unexpected delays or difficulties by a small number of facilities, or even a single production facility, had a significant impact on the accuracy of the EPA's projections. The EPA has continued to adjust the methodology used to project cellulosic biofuel production to better account for the uncertainties associated with the production of cellulosic biofuel. In recent years, as the market has begun to mature, the accuracy of our cellulosic biofuel production projections has significantly improved.

8. In the final rules released last November, it appears that EPA triggers its reset authority for advanced biofuels and cellulosic biofuels. What does EPA plan to do with its reset authority? Will it take into consideration that cellulosic and advanced biofuels have not taken off as successfully as conventional biofuel has?

9. If you do plan to use your reset authority, do you intend to adjust the total renewable fuel category as well?

Response (8-9): While the final volumes for 2016 have met the requirements to trigger the reset provisions for the advanced biofuel volumes in addition to the cellulosic biofuel volumes, they did not yet meet the requirements to trigger the reset provisions for the total renewable fuel volumes. We believe it is best for program implementation to conduct a reset rulemaking for all the standards simultaneously, which would mean after the total renewable fuel volume reset requirements have been met. Nevertheless, we have begun preliminary internal discussions on development of a reset rule.

10. What does the Agency intend to do should the reset authority for ethanol be triggered?

Response: The statutory requirement to "reset" the volumes under certain conditions applies to the four categories of renewable fuel specified in the statute: cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel. There is no explicit standard, per se, for ethanol or conventional biofuel, and thus neither are subject to the statutory reset provisions. As noted above, we are in the preliminary stages of discussing the reset provisions as established in the law.

11. The Energy Independence and Security Act of 2007 (EISA) requires that EPA conduct a study to determine if the RFS has an adverse impact on air quality. The study was supposed to be completed 18 months after the law's enactment and regulations were required to be issued 3 years later in 2010, yet EPA has not completed either of these. Why has EPA delayed so long in completing this mandatory study? Does EPA plan to

finish this study in the near future and issue regulations? If so, when will it be concluded?

12. If this study finds an adverse impact on air quality, how does EPA believe that will impact the future of the RFS program?

Response (11-12): EPA has taken important initial steps in the development of the statute's required anti-backsliding study. For example, the EPA collaborated with the Department of Energy and the Coordinating Research Council to complete the "EPAct Study," looking at the impact of fuel parameters on emissions from vehicles. The EPAct Study is foundational for the anti-backsliding study, allowing the EPA to model emission effects of any real-world gasoline and therefore characterize emissions impacts specifically related to increases in renewable fuels. Although the EPAct study is now complete, other long lead time elements such as emissions modeling and air quality modeling need to be completed before the anti-backsliding study can be completed.

13. According to recent media reports, there have been cases where people have been convicted for selling millions of dollars in RINs for biofuels that were never produced. What oversight does EPA have in place to prevent this kind of fraud from occurring? How often does EPA find cases of RIN fraud?

Response: The RFS program is structured so that each party involved in RIN generation, RIN distribution and RIN use is obligated to help ensure that the RINs they transfer are valid – incorporating the eyes and ears of most RFS stakeholders to help monitor the program. We have also created a third-party Quality Assurance Program (QAP) that gives private industry a tool to monitor and help ensure the fuel is compliant. Importantly, we have also developed and implemented a sophisticated database system to track and monitor renewable fuel credits. Finally, the EPA, along with DOJ and other law enforcement partners, is aggressively pursuing both civil and criminal enforcement of those individuals that have fraudulently generated RINs in this program and are holding them accountable to the full extent of the law. Over 150 million fraudulent RINs have been replaced. To date, thirteen individual defendants have been sentenced to serve over 97 years of incarceration for their roles in criminal schemes involving RINs and related tax credits. In many cases, the sentencing courts have also issued forfeiture and restitution orders directing convicted defendants to give up criminally obtained assets and to pay back what they stole. The orders pertain to tens of millions of dollars in fraud loss and the restitution orders offer victims of RFS fraud a path to recover some of what these criminals took. Unfortunately, as is often the case in large fraud schemes, the criminals dissipated much of what they took during the course of their crimes. I cannot emphasize enough how seriously I personally, and my office in general, take our compliance assurance responsibilities to deliver the environmental protection the public expects and to create the level playing field the industry deserves.

14. Would higher octane levels in gasoline help auto companies meet aggressive fuel economy requirements regulated by EPA, the National Highway Traffic Safety Administration, and the California Air Resources Board (CARB)?

Response: The current light-duty vehicle greenhouse gas and CAFE standards, which cover

and extend through model year 2025 cars and trucks, were developed assuming current fuel octane levels. These standards can be achieved using existing vehicle and engine technologies, with no need for any change to gasoline parameters. If vehicle manufacturers were to develop vehicles with engines with higher compression ratios that depend on the availability of higher octane blend, that may provide another path towards achieving greenhouse gas reductions and increased fuel economy.

15. Has EPA estimated the cost, assuming lowest cost path to raise octane, to raise the octane level on a per-gallon basis?

Response: We are aware of various industry studies looking at this general topic, but EPA has not yet evaluated the issue in detail.

16. Does EPA have authority to raise octane levels in gasoline?

Response: The EPA has general authority under section 211(c) of the Clean Air Act to set standards for fuel and fuel additives provided certain requirements can be met. Whether the EPA has authority to set octane levels in gasoline would depend on the basis and rationale for the regulation. The EPA does not currently regulate octane levels.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 05 2016

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Barbara Boxer
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Boxer:

Thank you for your May 19, 2016, letter to the Administrator of the U.S. Environmental Protection Agency. In your letter you requested responses to questions for the record following the April 19, 2016, hearing before the U.S. Senate Committee on Environment and Public Works regarding the fiscal year 2017 budget for the agency. Responses to your questions are provided in the enclosure to this letter.

If you have any questions, please contact me, or your staff may contact Jim Blizzard in the Office of Congressional and Intergovernmental Relations at blizzard.james@epa.gov or (202) 564-1695.

Sincerely,

Nichole Distefano
Associate Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 05 2016

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your May 19, 2016, letter to the Administrator of the U.S. Environmental Protection Agency. In your letter you requested responses to questions for the record following the April 19, 2016, hearing before the U.S. Senate Committee on Environment and Public Works regarding the fiscal year 2017 budget for the agency. Responses to your questions are provided in the enclosure to this letter.

If you have any questions, please contact me, or your staff may contact Jim Blizzard in the Office of Congressional and Intergovernmental Relations at blizzard.james@epa.gov or (202) 564-1695.

Sincerely,

Nichole Distefano
Associate Administrator

Enclosure

Senator Gillibrand GIL-001

SAFE DRINKING WATER ACT-RECLASSIFY PFOA

Question: Administrator McCarthy, thank you for testifying here today, and for your continued leadership at the EPA to protect clean air and clean water, and address the urgent threats we face from climate change. The EPA has a critical responsibility to protect the health of our families; whether it is working to ensure that our children in the Bronx can go outdoors in the summer without fear of an asthma attack, or that families in Upstate New York can swim and fish in our lakes, rivers and streams without fear of pollution by harmful runoff and algae blooms. While we still have much work to do to fully realize those goals, initiatives like the Clean Power Plan and the Clean Water Rule have helped us move the ball forward, and I continue to support those efforts.

I would like to ask you about a 2 areas of concern I have that are specific to New York:

As I am sure you are aware, EPA Region 2 has been working to address a situation in the Village of Hoosick Falls, in Upstate New York, where drinking water has been contaminated by the chemical PFOA.

A significant concern is that PFOA is an "unregulated contaminant" under the Safe Drinking Water Act, which limited the EPA's ability to respond to PFOA contamination, and led to an initially false assumption that the drinking water in Hoosick Falls was safe to drink, when it was in fact likely making people very sick. This is nothing short of an environmental disaster for the families who have been affected by PFOA contamination in their water.

What would it take to reclassify PFOA so that it is regulated under the Safe Drinking Water Act?

Answer: The EPA is evaluating PFOA and PFOS as drinking water contaminants in accordance with the process required by the Safe Drinking Water Act (SDWA). To regulate a contaminant under SDWA, the EPA must find that the contaminant: (1) may have adverse health effects; (2) occurs frequently (or there is a substantial likelihood that it occurs frequently) at levels of public health concern; and (3) there is a meaningful opportunity for health risk reduction for people served by public water systems.

The EPA included PFOA and PFOS among the contaminants for which water systems were required to monitor under the third Unregulated Contaminant Monitoring Rule (UCMR 3) in 2012. Results of this monitoring effort can be found on the publicly-available National Contaminant Occurrence Database (NCOD) at https://www.epa.gov/dwucmr/occurrence-data-unregulated-contaminant-monitoring-rule#3, which is updated by the EPA approximately quarterly. In accordance with SDWA, the EPA will consider the occurrence data from UCMR 3, along with the peer reviewed health effects assessments supporting the PFOA and PFOS Health Advisories, to make a regulatory determination on whether to initiate the process to develop a national primary drinking water regulation.

PFOA

Question: Given the attention that has been placed on PFOA, and concerns that have been raised both in New York and other New England states about its prevalence in our region and potential health impacts, what additional steps can be taken to protect the public from PFOA?

Answer: The EPA established health advisories for PFOA and PFOS in May 2016 based on the agency's assessment of the latest peer-reviewed science in order to provide drinking water system operators and federal, state, tribal and local officials, who have the primary responsibility for overseeing these systems, with information on the health risks of these chemicals. These advisories will help them take the appropriate actions to protect their residents. The EPA is committed to supporting states and public water systems as they determine the appropriate steps to reduce exposure to PFOA and PFOS in drinking water. As science on health effects of these chemicals evolves, the EPA will continue to evaluate new evidence.

If past sampling data shows that drinking water contains combined PFOA and PFOS at individual or combined concentrations greater than 70 parts per trillion, water systems should:

- Quickly undertake additional sampling to assess the level, scope and localized source of contamination to inform next steps;

If water sampling results confirm that drinking water contains PFOA and PFOS at individual or combined concentrations greater than 70 parts per trillion, the agency recommends that water systems:

- Promptly notify their state drinking water safety agency (or the EPA in jurisdictions for which the EPA is the primary drinking water safety agency);
- Consult with the relevant agency on the best approach to conduct additional sampling;
- Provide consumers with information about the levels of PFOA and PFOS in their drinking water, including specific information on the risks to fetuses during pregnancy and breastfed and formula-fed infants; and
- Identify options that consumers may consider to reduce risk, such as seeking an alternative drinking water source, or in the case of parents of formula-fed infants, using formula that does not require adding water.

A number of options are available to drinking water systems to lower concentrations of PFOA and PFOS in its drinking water supply. In some cases, drinking water systems may be able to reduce concentrations of perfluoraklyl substances, including PFOA and PFOS, by closing

contaminated wells or changing rates of blending of water sources. Alternatively, public water systems can treat source water with activated carbon or high pressure membrane systems (e.g., reverse osmosis) to remove PFOA and PFOS from drinking water. These treatment systems are used by some public water systems today, but should be carefully designed and maintained to ensure that they are effective for treating PFOA and PFOS. In some communities, entities have provided bottled water to consumers while steps to reduce or remove PFOA or PFOS from drinking water, or establish a new water supply, were completed.

HOOSICK FALLS

Question: On February 1st, I wrote to Region 2 Regional Administrator Judith Enck, asking the EPA to expedite the process for listing Hoosick Falls as a federal Superfund site. Will you commit to me that you will personally ensure that this process moves as quickly as possible and that EPA will be aggressive in ensuring that the contamination is remediated?

Answer: Addressing the contamination in the Village of Hoosick Falls is a high priority for the EPA. We are currently gathering information needed to evaluate the site for inclusion on the National Priorities List of Superfund sites. We also are conducting investigations to identify the parties responsible for the contamination. We are working actively with both the New York State Department of Health and New York State Department of Environmental Conservation to coordinate our respective investigative and remedial efforts to ensure that accurate information is provided to the public and to effectively address the contamination problem.

HUDSON RIVER

Question: What purpose does it serve for the EPA to release a white paper dismissing data presented NOAA which has a responsibility for the Hudson River a Federal Trustee - before your agency even begins its 5 year review?

Answer: The EPA's white paper presents a thorough, detailed, scientific evaluation of a scientific article authored by National Oceanographic and Atmospheric Administration (NOAA) scientists. In the EPA paper, the agency does not dismiss any data, but instead, identifies and addresses important and more recent data that NOAA did not consider in its analysis. In that analysis, NOAA concluded that the dredging project's goals would not be achieved for decades longer than the EPA had predicted in 2002, the year the EPA selected the cleanup action. In the EPA's white paper, the agency presents its conclusion that, based on more recent data, as well as other factors, the project is on a trajectory of environmental improvement consistent with the EPA's prediction 14 years ago.

In the white paper and publically, the EPA has been careful to define "project success" in terms of accomplishing the planned dredging/mass removal and that, following the agency's recent comprehensive review, we do not have any information to indicate otherwise. Therefore, we can move forward to the project's monitored natural recovery phase. The EPA has acknowledged that PCBs remain in the river and supports the Trustees' efforts to address such potential injury through the Natural Resource Damage (NRD) assessment and claims process. The EPA will continue to cooperate and communicate with federal and state natural resource trustees on the Hudson River remediation.

HUDSON RIVER-RESTORE AND PROTECT

Question: Will you ensure that all relevant evidence and data is evaluated during the course of the 5 year review, and that the Federal Trustees have a seat at the table so that EPA can work with them cooperatively to ensure that we are doing everything possible to fully restore and protect the Hudson River?

Answer: Yes, we are working closely with all the stakeholders to ensure a thorough Five-Year Review (FYR). The stakeholders, including the Federal Trustees, New York State Department of Environmental Conservation and Department of Health, the Community Advisory Group, and non-governmental organizations have been invited to be part of the FYR team.

OZONE IMPLEMENTATION GUIDANCE

Question: EPA is required to issue ozone implementation guidance. However, despite 90% of the states that commented on the proposed standard requested EPA propose an implementation rule at the time the Agency finalized the standard, EPA will not propose an implementation rule until October 2016. Yet, we know EPA is dedicating air office officials toward the stayed-Clean Power Plan-related activities. Why are you not doing something 90% of states commenting, reflecting a bipartisan consensus, requested, rather than pursuing actions that are legally vulnerable and being challenged by more than half the states?

Answer: Concurrent with promulgation of the final revised NAAQS, the EPA also issued an implementation memo (https://www.epa.gov/sites/production/files/2015-10/documents/implementation_memo.pdf) describing rules and guidance that remain current and applicable to the revised standards, and updates that the agency expects to complete for states to use in planning for the revised NAAQS. The EPA and state co-regulators share a long history of managing ozone air quality under the Clean Air Act (CAA), underpinned by a wealth of previously issued rules and guidance. The EPA is committed to helping air agencies identify and take advantage of potential planning and emissions control efficiencies that may occur within the horizon for attaining the 2015 standards.

Addressing carbon pollution is also a part of the agency's obligations under the Clean Air Act. Since the Supreme Court stayed the Clean Power Plan (CPP) pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the Supreme Court, many states have said they intend to move forward voluntarily to continue to work to cut carbon pollution from power plants and are seeking the agency's guidance and assistance. The agency will be providing such assistance, which is not precluded by the stay. In particular, some states have asked to move forward with outreach and to continue providing support and developing tools, including the proposed design details for the Clean Energy Incentive Program (CEIP). The agency will move forward in a way that is consistent with the stay while providing states the tools they have asked for to help address carbon pollution from power plants.

CLEAN AIR SCIENTIFIC ADVISORY COMMITTEE-NOMINATIONS

Question: Administrator McCarthy, as you know, I have long been concerned about the integrity of the selection process for nominations to the Clean Air Scientific Advisory Committee (CASAC) and the Science Advisory Board (SAB). I was surprised to learn in response to my February 2, 2016, letter on the most recently appointed members of CASAC that each of those selected were nominated not by the public, rather, they were all nominated by the EPA or an EPA designated federal officer. Essentially, anyone nominated by an individual outside of the agency's network was not selected. Are you concerned by this finding? What is the point of soliciting public nominations if the EPA only selects those internally appointed?

Answer: The EPA has policies and procedures that meet and exceed what is required by law, in order to assure expert and independent advice from our advisory committees. For example, although not required by law, the EPA provides the general public the opportunity to nominate candidates for the CASAC. The agency believes this more open nominations process expands the breadth and diversity of its applicant pool. In selecting members for the CASAC, the agency evaluates the qualifications and experience of all candidates without regard to whether individuals are nominated by the public or identified through staff outreach.

SCIENCE ADVISORY BOARD-POLICY STATEMENT

Question: Administrator McCarthy, as part of the FY 2016 omnibus, EPA was required to develop a policy statement for its Science Advisory Board, which would include goals on increasing membership from states and tribes, as well as update its conflict of interest policy. This was to be submitted to GAO for review last month. I understand it is still outstanding. What is the reason for delay and when does the Agency plan to submit this policy statement?

Answer: The agency has developed a draft policy statement for the Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC) that describes how the EPA implements the Federal Advisory Committee Act (FACA), federal ethics regulations, and agency policies for scientific integrity and peer review applicable to these advisory committees. The agency remains committed to the goal of including a diversity of scientific perspectives on the SAB and the CASAC, including the perspectives of scientists from state and local governments, tribes, industry, and nongovernmental organizations. The draft policy statement is currently undergoing final internal review and should be provided to the GAO in the coming weeks. The agency takes seriously the requirements for transparency, independence and balance of its advisory committees, including the SAB and the CASAC. The EPA frequently goes above and beyond the requirements of FACA to ensure that the SAB and the CASAC advisory processes are open and transparent, and applies federal ethics regulations to members of these committees.

GAO RECOMMENDATION

Question: Administrator McCarthy, last May GAO issued a report on the SAB entitled, "EPA's Science Advisory Board: Improved Procedures Needed to Process Congressional Requests for Scientific Advice," that included four recommendations – all of which remain unimplemented. What is the reason for delay in fulfilling these recommendations?

Answer: In the June 2015 report, *EPA's Science Advisory Board: Improved Procedures Needed to Process Congressional Requests for Scientific Advice* (GAO 15-500), the Government Accountability Office (GAO) recommended that the agency clarify procedures for reviewing congressional committee requests to the SAB to determine which questions should be taken up by the SAB and criteria for evaluating such requests. The agency agreed with those recommendations and is developing a process for considering requests for the SAB advice from the congressional committees listed in the SAB's authorizing statute (the Environmental Research, Development and Demonstration Authorization Act, ERDDAA). The draft process is undergoing final internal review and should be finalized in the coming weeks. In addition to developing a written process for evaluating congressional requests for the SAB advice, the agency is considering whether amendments to the SAB charter also would be helpful to clarify how congressional requests for the SAB advice will be handled.

SIP BACKLOG

Question: At a March 9 full committee hearing with state environmental regulators, we received testimony that EPA has increasingly issued federal implementation plans while simultaneously slow-walking review of state implementation plans. Although I understand EPA has made some progress in addressing the SIP backlog, can you please provide the Committee a breakdown of the status of EPA's work towards reducing the SIP backlog?

Answer: The EPA has been working with states since 2013 on plans to reduce the State Implementation Plan (SIP) backlog and address the states' priority SIPs. This work has resulted in four-year plans developed with states to substantially reduce the historic backlog of SIPs by the end of 2017. Steady and substantial progress has been made over the last several years through the EPA and the states working together. An important part of the agency's joint effort with the states is ongoing discussions between the regions and states to identify which SIPs the states prioritize for action. The EPA has acted on hundreds of pending SIPs in each of the last several years.

NATIONAL ACADEMY OF SCIENCES REVIEW-SCC

Question: In July 2015, the EPA, as part of the Interagency Working Group on the Social Cost of Carbon (SCC), requested the National Academy of Sciences review the SCC. How much funding for NAS's review has EPA committed?

Answer: At the request of the Interagency Working Group (IWG) on the Social Cost of Carbon, co-chaired by the White House's Office of Management and Budget (OMB) and Council of Economic Advisors (CEA), the National Academies of Sciences, Engineering and Medicine convened a Committee on "Assessing Approaches to Updating the Social Cost of Carbon." This is an interagency sponsored project, with contributions coming from the EPA as well as the Departments of Commerce, Energy, Interior, and Transportation. The Department of Energy (DOE) is serving as the coordinating agency for the contract.

MULTIPURPOSE GRANTS

Question: For FY 2016 Congress appropriated $21 in multipurpose grants to states and tribes, which EPA requested zero funding for in its FY2017 budget request. Can you please explain the reason for eliminating funds for this program? In early April, EPA released its formula for disbursing the grants, with more than 60% going to "core air regulatory work;" yet Congress stipulated the grants were to provides "states and tribes to have the flexibility to direct resources." How does EPA's formula provide states and tribes flexibility to use these grants?

Answer: The EPA formula provides flexibility to states within both funding focus areas. First, states have latitude to decide what air activities to fund with the air portion of their funding. The second part of a state's funding is available for priority activities identified by individual states under any existing continuing environmental program. For both focus areas, state identified activities must fall under existing federal environmental statutes consistent with the language included in the FY 2016 appropriations. Additionally, states have the flexibility to fund these activities under a Performance Partnership Grant (PPG) or new standalone multipurpose grant. The FY 2017 President's Budget request included increases for several grants to states and tribes, including $40 million for state and local air quality management grants, $30.9 million for Tribal General Assistance Program grants, $15.7 million for Environmental Information grants, and $15.4 million for pollution control (section

EPA REGULATIONS-RESOURCES

Question: We have held several hearings in which state and local officials have come to testify about the challenges of implementing EPA regulations on a limited budget with limited resources. This is particularly problematic in South Dakota, where the Department of Environment and Natural Resources is a small staff with a limited budget and is required to oversee the implementation and compliance with state and federal regulations. Although we have repeatedly heard your agency say that there are resources to help states comply with regulations, I am increasingly concerned with the amount of what I consider to be unfunded mandates coming out of your agency.

Again, although you have said there are resources to help states comply with EPA regulations, I have heard time and time again that this is not the case as these limited resources are spread out among all of the states. What do you tell states who are repeatedly telling you that they simply don't have the resources to comply with these vast, comprehensive EPA regulations?

Answer: Supporting our state partners, the primary implementers of environmental programs on the ground, is a long-held priority of the EPA. Funding to states and tribes in the State and Tribal Assistance Grants (STAG) account continues to be the largest percentage of the agency's budget, at 39.7 percent in FY 2017. This percentage excludes resources the EPA provides to states and tribes via cooperative agreements, interagency placement assignments, and other vehicles from the agency's operating accounts (e.g., Leaking Underground Storage Tanks, Superfund, and Environmental Programs and Management). This reflects the agency's recognition of and commitment to supporting our partners and leveraging limited resources to oversee the implementation of and compliance with EPA regulations. In FY 2017, the EPA will continue to modernize the business of environmental protection through the E-Enterprise strategy jointly governed by states and the EPA. Under the E-Enterprise strategy, the agency will continue to streamline its business processes and systems to reduce reporting burden on states and regulated facilities, and improve the effectiveness and efficiency of regulatory programs for the EPA, states, and tribes.

EPA REGULATIONS-STATE COMPLIANCE

Question: We have held several hearings in which state and local officials have come to testify about the challenges of implementing EPA regulations on a limited budget with limited resources. This is particularly problematic in South Dakota, where the Department of Environment and Natural Resources is a small staff with a limited budget and is required to oversee the implementation and compliance with state and federal regulations. Although we have repeatedly heard your agency say that there are resources to help states comply with regulations, I am increasingly concerned with the amount of what I consider to be unfunded mandates coming out of your agency.

Do you plan to do anything more to help states comply with current and future EPA regulations?

Answer: The FY 2017 President's Budget includes an increase of $40 million for state grants to assist with implementation of climate and air quality programs, as well as $15.4 million for state and tribal grants to assist with implementation of water quality programs. The request also includes an additional $15.7 million for grants to states and tribes to build tools, services, and capabilities that will enable greater exchange of data for delegated programs between states, tribes, regulated entities, and the EPA following E-Enterprise principles. Leveraging technology will enable the EPA, states, and tribes to move from a heavily paper-based evidence gathering process to a digitally-based rapid electronic process. The vision is to better identify patterns of problems, be more efficient and effective in data collection and records management, increase transparency on programmatic and compliance status and allow for quicker responses where appropriate.

REGULATORY IMPACT ANALYSES

Question: Last year the Subcommittee on Superfund, Waste Management, and Regulatory Oversight held a hearing on EPA's use of Regulatory Impact Analyses (RIA's) and the cost and benefit of EPA regulations. At the hearing we discussed a July 2014 GAO report that offered several recommendations for how EPA could improve adherence to OMB guidance, enhance the accuracy of RIA's and better monetize the cost and benefits of RIA's.

I am concerned that EPA continued to promulgate major, costly regulations, such as WOTUS and the Clean Power Plan, without fully implementing GAO's recommendations. I understand these recommendations are still open, when can we expect they will be fully implemented?

Answer: In its recent update on these recommendations (http://www.gao.gov/products/GAO-14-519), the GAO has closed one recommendation, recognizing that the EPA has implemented it. On other recommendations, the GAO notes that "EPA is making progress in the spirit of" these recommendations but has not closed them given the longer-term nature of these efforts.

REGULATORY IMPACT ANALYSES-RELIABILITY

Question: Last year the Subcommittee on Superfund, Waste Management, and Regulatory Oversight held a hearing on EPA's use of Regulatory Impact Analyses (RIA's) and the cost and benefit of EPA regulations. At the hearing we discussed a July 2014 GAO report that offered several recommendations for how EPA could improve adherence to OMB guidance, enhance the accuracy of RIA's and better monetize the cost and benefits of RIA's.

How do you explain the reliability of recent EPA regulations, if they were promulgated through a process that GAO specifically suggested might not be entirely accurate and needed improvement?

Answer: While the GAO made recommendations to improve the agency's process, there was not a finding of systematic deficiencies with respect to the accuracy of the analytical work. The EPA regulations have been developed in accordance with all applicable requirements, including those of Executive Orders 12866 and 13563 and the guidelines of OMB Circular A-4. The EPA relies on the best available information to calculate both the costs and benefits of rules and further refines these analyses through the interagency and public comment processes. In addition, the EPA maintains a public docket where all of the underlying documentation for each RIA is available. Further, consistent with E.O. 12866, the RIAs developed for economically significant regulations are reviewed by OMB and undergo an interagency review process before being released for public notice and comment.

EPA REGULATIONS-SMALL BUSINESS IMPACTS

Question: Last month, the Subcommittee on Superfund, Waste Management, and Regulatory Oversight hosted a hearing on small business impacts from EPA regulations, and we received testimony regarding a number of instances where the EPA has disagreed with the Office of Advocacy's recommendations on a particular rulemaking. Our witnesses testified that there is no mechanism in the law that reconciles these differences between the EPA and the Office of Advocacy. I asked at the hearing for you to share how you view the Office of Advocacy's recommendations and how seriously you consider these recommendations throughout the rulemaking process, to which you said you do take Advocacy's comments into account. However, there are many instances where the Agency, in fact, takes action against Advocacy's recommendation.

Do you think a third party arbiter would help reconcile differences between EPA and Advocacy?

Answer: The agency considers all comments received as part of a rulemaking process, including information received from the public as well as through the interagency process. The views of small businesses are taken into account through various means in the process, including participation by the Small Business Administration in the interagency review process run by the Office of Management and Budget. In addition, as part of its Regulatory Flexibility Analysis for a rulemaking, the agency responds to comments filed by the Office of Advocacy. The agency describes steps taken to minimize impacts on small businesses and other small entities, and provides an explanation of why any significant alternatives considered by the agency that affect the impacts on small entities were not adopted in the rule.

REGULATORY FLEXIBILITY ACT

Question: At the same subcommittee hearing, we received testimony that there are opportunities for EPA to increase transparency with its implementation of the Regulatory Flexibility Act. For example, one witness testified that EPA could make its final SBREFA report public at the time complete rather than waiting until a rule is issued, something OSHA already does with its SBREFA reports.

Why does EPA wait until a rule is issued to release its SBREFA report? Don't you think the public and regulated entities, such as small businesses, would benefit from the report being made publicly available as soon as complete? Will you commit to making these reports public when complete moving forward?

Answer: A completed SBREFA report is one of the support documents used by the agency in developing a proposed rule, and is provided to the Administrator so that its recommendations may be considered during the development of the rule. The report is made public when the proposed rule is released for public comment, consistent with all applicable requirements. Small entity representatives provide key input to the Federal participants in the Small Business Advocacy Review Panel, who then develop recommendations to the Administrator on how best to achieve the goals of the RFA. Because the Panel Report is a key element of the administrative record for the proposed rule, it is placed in the rulemaking docket at the time the proposed rule is published. Comments on the report are then considered in development of a final rule.

REGULATORY FLEXIBILITY ACT

Question: The courts have held agencies are not required to consider indirect or secondary impacts of a rule for purposes of the Regulatory Flexibility Act. However, I understand that the compliance burden is on the states, but often small businesses are significantly indirectly impacted by regulations, regardless of who has the burden of complying with the regulations.

Do you believe indirect impacts on small businesses should be considered and do you think a rulemaking would benefit from greater small business input early in the rule development process?

Answer: In addition to the requirements of the Regulatory Flexibility Act, the agency frequently undertakes many types of public outreach, including outreach to small businesses, during the development of its rules. For example, the agency may hold public meetings early in the rule development process. Frequently, agency offices, including the regional offices, hold meetings with stakeholders including small businesses. The information gained from this engagement informs the rulemaking process by providing input from various stakeholders. In addition to the public and stakeholder meetings, the agency has other mechanisms in place to ensure that the views of small businesses can be incorporated into the agency's decision making processes. One such example is that the EPA's Deputy Administrator holds periodic meetings with small businesses to discuss regulatory topics suggested by and of interest to small businesses. The EPA also has an Asbestos and Small Business Ombudsman that advocates for small business during the EPA rulemaking process.

WATERSHED TRADING PROGRAM

Question: Do you think EPA needs to do more to allow watershed trading to occur?

Answer: The EPA has taken many important steps to support efforts by states and other stakeholders to pursue water quality trading consistent with the Clean Water Act.

To date, the EPA has authorized forty-six states to run their own National Pollutant Discharge Elimination System (NPDES) programs. State permitting authorities (or the EPA in unauthorized states) can establish water quality trading programs, based on their unique regulatory structure as well as stakeholder and environmental needs. The primary demand-side driver for nutrient trading is the existence of a new or more stringent water quality based effluent limit for nutrients in a point source's NPDES permit. States usually include such water quality- based effluent limits in NPDES permits following state establishment of a nutrient TMDL, or state determination of "reasonable potential" for the NPDES permittee's discharge. Without this permit driver in place, there has been little demand for nutrient reduction credits.

Roughly one third of states have had water quality trades in their state. Each state with a trading program has developed its own unique trading rules. Some states have enacted statutes or regulations that authorize and regulate their statewide trading programs, such as Connecticut, Virginia, and Ohio. Other states authorize trading on a case-by-case basis through watershed-specific or individual NPDES permits, such as North Carolina's Neuse River Compliance Association trading program. Other states, such as Arkansas and Louisiana, are considering developing water quality trading programs. Many of the states with active trading programs, such as Pennsylvania and Oregon, allow NPDES permit holders to attain their nutrient water quality-based effluent limits through the purchase of nonpoint source nutrient reduction credits.

As demand drivers increase, we anticipate water quality trading to increase as a flexible method for meeting those regulatory requirements. The EPA looks forward to continuing its work with states and other stakeholders interested in pursuing these approaches.

WATERSHED TRADING PROGRAM-CLEAN WATER ACT

Question: EPA allows some non-point source nutrient reduction initiatives under EPA's watershed trading program, but there is no usable process to allow this to occur.

Are legislative changes to the Clean Water Act necessary to make watershed trading usable?

Answer: The Clean Water Act provides sufficient authority for the EPA to implement its water quality trading policy. The EPA's 2003 Water Quality Trading Policy encourages states, interstate agencies and tribes to develop and implement water quality trading programs consistent with the Clean Water Act (CWA) and its implementing regulations for nutrients, sediments and other pollutants (with some exceptions) where opportunities exist to achieve water quality improvements at reduced costs. One of the EPA's roles under its CWA oversight authority is to ensure that any such water quality trading programs are consistent with the CWA and its implementing regulations. The EPA is working with states and interested stakeholders to educate and assist them regarding their options for establishing water quality trading programs.

DISINFECTION BY-PRODUCTS RULES

Question: Are Tier 2 public notices (PN) for the EPA disinfection by-products rules eligible for electronic reporting or annual notice (similar to Tier 3 PNs)?

Answer: Tier 2 notices require notice within 30 days of the violation and subsequent notice every three months for as long as the violation continues. Annual notices are not an option. Tier 2 requires mail or direct delivery with the bill and a method to notify those who do not receive a bill or do not have service connection addresses (such as renters, apartments, nursing homes, etc.). Posting on the internet is allowed as one of the methods to reach those consumers. In addition, systems might be required to use other methods to reach consumers who might not see a posted notice in a school, library, or other commercial/public buildings.

NATIONAL RADON ACTION PLAN

Question: In your testimony on April 19, you stated that the National Radon Action Plan (NRAP) will replace the Federal Radon Action Plan (FRAP). The major differences between FRAP and NRAP are that NRAP has no dedicated funding plan like the State Indoor Radon Grant (SIRG) program and the major responsibilities are pushed to the states and private sector.

How will NRAP be successful without federal funding and active federal leadership?

Answer: In FY 2016, the EPA closed out the Federal Radon Action Plan and launched a broader plan, the National Radon Action Plan (NRAP). This plan was endorsed by nine non-governmental organizations and three federal agencies. The EPA will continue to lead the federal government's response to radon and continue to implement the agency's own multi-pronged radon program. With funding requested in FY 2017 through the agency's indoor air program, the EPA will encourage radon risk reduction as a normal part of doing business in the real estate marketplace, will promote local and state adoption of radon prevention standards in building codes, and will participate in the development of national voluntary standards (e.g., mitigation and construction protocols) for adoption by states and the radon industry

NATIONAL RADON ACTION PLAN - SIRG PROGRAM

Question: In your testimony on April 19, you stated that the National Radon Action Plan (NRAP) will replace the Federal Radon Action Plan (FRAP). The major differences between FRAP and NRAP are that NRAP has no dedicated funding plan like the State Indoor Radon Grant (SIRG) program and the major responsibilities are pushed to the states and private sector.

Is there a plan or need to create a SIRG program within NRAP to make it successful?

Answer: In FY 2016, the EPA closed out the Federal Radon Action Plan and launched a broader plan, the National Radon Action Plan (NRAP). This plan was endorsed by nine non-governmental organizations and three federal agencies. The EPA will continue to lead the federal government's response to radon and continue to implement the agency's own multi-pronged radon program. With funding requested in FY 2017 through the agency's indoor air program, the EPA will encourage radon risk reduction as a normal part of doing business in the real estate marketplace, will promote local and state adoption of radon prevention standards in building codes, and will participate in the development of national voluntary standards (e.g., mitigation and construction protocols) for adoption by states and the radon industry.

STATE INDOOR RADON GRANT PROGRAM

Question: You justified EPA's cuts in funding for SIRG in part by saying that SIRG funding to some states has not been very effective.

Can EPA modify the grant allocation to make SIRG more effective? Please comment and assess ways to improve SIRG rather than eliminate it.

Answer: Reducing radon related deaths continues to be a priority for the EPA and the Administration. From 1990 to 2013, the estimated number of homes needing mitigation (i.e., having radon levels at or above 4 picocuries per liter (pCi/L) and no mitigation system) increased by 14 percent; from about 6.2 million to 7.1 million homes. During the same period, the number of homes with operating mitigation systems increased by more than 700 percent from 175,000 to 1,245,000 homes.

For over 25 years, the EPA has provided federal funding to states and technical support to transfer best practices among states that promote effective program implementation across the nation. Section 306 of the Indoor Radon Abatement Act (IRAA) authorizes radon grant assistance to states, as defined by the Toxic Substances Control Act (TSCA) Title III. The EPA has targeted this funding to support states with the greatest populations at highest risk. In future years, the EPA will continue to promote partnerships between national organizations, the private sector, and more than 50 state, local, and tribal governmental programs to achieve radon risk reduction.

STATE INDOOR RADON GRANT PROGRAM – RADON PROFESSIONALS

Question: If SIRG is eliminated, will EPA undertake and maintain the state listings of certified radon professionals?

Answer: In FY 2017, the EPA will continue providing consumers with information and guidance on locating qualified radon measurement and mitigation services professionals. The EPA's website (https://www.epa.gov/radon/find-radon-test-kit-or-measurement-and-mitigation-professional#who) contains information regarding radon credentialing programs, listings for state radon program contacts and general indoor air quality information. In addition, most states provide information about qualified radon service providers and many states have some form of radon requirements for radon service providers.

Forty-five states requested and received State Indoor Radon Grants (SIRGs) funding this past fiscal year. In the absence of SIRG, states would depend on their own funds to continue investment in radon programs. States receiving federal SIRG funds are required to provide a 40% match. Many states provide this through in-kind matches (non-monetary resources), others through appropriated funds. This would be the starting place for states to consider whether they would fund state programs in the absence of SIRG funds. A number of states have developed additional radon funding mechanisms through state licensing or mitigation system installation fees.

STATE INDOOR RADON GRANT PROGRAM - CONSUMERS

Question: How will the agency ensure that consumers are not subject to fraud from uncertified professionals using equipment that may not be calibrated and traceable to a radon standard or a radon decay product standard, particularly in non-regulated states?

Answer: In FY 2017, the EPA will continue providing consumers with information and guidance on locating qualified radon measurement and mitigation services professionals. The EPA's website (https://www.epa.gov/radon/find-radon-test-kit-or-measurement-and-mitigation-professional#who) contains information regarding radon credentialing programs, listings for state radon program contacts and general indoor air quality information. In addition, most states provide information about qualified radon service providers and many states have some form of radon requirements for radon service providers.

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STATE INDOOR RADON GRANT PROGRAM – STATE GRANTEES

Question: Please provide a list of state grantees and indicate which states are likely to continue their current investment in radon in the absence of federal SIRG funding.

Answer: In FY 2017, the EPA will continue providing consumers with information and guidance on locating qualified radon measurement and mitigation services professionals. The EPA's website (https://www.epa.gov/radon/find-radon-test-kit-or-measurement-and-mitigation-professional#who) contains information regarding radon credentialing programs, listings for state radon program contacts and general indoor air quality information. In addition, most states provide information about qualified radon service providers and many states have some form of radon requirements for radon service providers.

All states with the exception of New Hampshire, Maryland, Hawaii, Arkansas, and Louisiana requested and received State Indoor Radon Grants (SIRGs) funding this past fiscal year. In the absence of SIRG, states would depend on their own funds to continue investment in radon programs. States receiving federal SIRG funds are required to provide a 40% match. Many states provide this through in-kind matches (non-monetary resources), others through appropriated funds. This would be the starting place for states to consider whether they would fund state programs in the absence of SIRG funds. A number of states have developed additional radon funding mechanisms through state licensing or mitigation system installation fees.

RADON RISK MAPS

Question: The last federal surveys and state radon mapping occurred nearly three decades ago. Several states have updated state risk data with their own maps that show a larger risk than initial assessments. Does EPA have any plans to update the EPA radon risk maps?

Answer: In FY 2017, the EPA will continue to maintain its map of radon zones aimed at assisting national, state and local governments, and private organizations to target their resources to implement radon-resistant building codes. Please visit https://www.epa.gov/radon/find-information-about-local-radon-zones-and-state-contact-information#radonmap for more information. The agency continues to recommend that this map be supplemented with any new data vetted by the states in order to further understand and predict the radon potential for specific areas and counties. This approach is captured in new consensus-based private sector radon standards under development by the radon industry's standards consortium.

ECOLABELS

Question: The US Green Building Council recently announced the LEED green building rating system will now award credit for forest products certified to the SFI and ATFS standards. I understand that the EPA is re-examining its interim recommendations regarding the use of environmental standards and labels in federal procurement for lumber.

Can you please tell me what your agency is doing to reconsider your recommendation and ensure that it appropriately recognizes other credible standards like Sustainable Forestry Initiative (SFI) and the American Tree Farm System (ATFS)?

Answer: The EPA is seeking clarification from the U.S. Green Building Council (USGBC) on whether the LEED Alternative Compliance Pathway that awards credit for forest products certified to the Sustainable Forestry Initiative (SFI) and American Tree Farm System (ATFS) standards sufficiently addresses environmental criteria or if it is focused more narrowly on legality of harvesting.

The Implementing Instructions for Executive Order 13693 - Planning/or Federal Sustainability in the Next Decade - directed the EPA, in consultation with the Office of Management and Budget and the Council on Environmental Quality, to issue these recommendations to assist Federal purchasers in identifying and procuring environmentally sustainable products. The basis for our interim recommendations on wood/lumber was the DOE GreenBuy Program. The EPA is pursuing several options to determine if an update to the lumber/wood interim recommendations is appropriate, and has updated the website to reflect this (see the footnote for Lumber/Wood under the Construction sector at https://www.epa.gov/greenerproducts/epas-recommendations-specifications-standards-and-ecolabels).

The EPA is engaging with both the Department of Energy and the U.S. Department of Agriculture in a high-level review to determine the effectiveness of these standards in protecting human health and the environment. Furthermore, the EPA's standards executive is currently reviewing the forestry standards to determine if they were developed through a voluntary consensus approach consistent with the National Technology Transfer and Advancement Act (NTTAA) and OMB Circular A-119. Finally, SFI, ATFS, Canadian Standards Association (CSA) and Forest Stewardship Council (FSC) have each volunteered to have their forestry standards assessed against the criteria developed through a multi-stakeholder consensus process in the guidelines pilot for the flooring and furniture sectors. The results of that pilot assessment can help inform whether those standards would meet the EPA's baseline criteria for environmental performance as specified in the EPA's draft guidelines for Environmental Performance Standards and Ecolabels for use in Federal procurement.

ECOLABELS – INTERIM RECOMMENDATIONS

Question: The US Green Building Council recently announced the LEED green building rating system will now award credit for forest products certified to the SFI and ATFS standards. I understand that the EPA is re-examining its interim recommendations regarding the use of environmental standards and labels in federal procurement for lumber.

Can you give me an assurance that you will move quickly with this review and provide a timeline when a decision will be made?

Answer: The EPA will consider the input received from other Federal agencies, stakeholders, and experts, along with information obtained during our assessment of forestry standards during the pilot process, to inform the further refinement and finalization of the EPA's guidelines and recommendations. The agency believes it can decide on a path forward within the next several months.

AL-16-000-7556

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 25 2016

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Committee's questions for the record following the March 17, 2016, hearing titled "Examining Federal Administration of the Safe Drinking Water Act in Flint, Michigan, Part III."

I hope this information is helpful to you and the members of the Committee. If you have further questions, please contact me or your staff may contact Cathy Davis in the EPA's Office of Congressional and Intergovernmental Relations at Davis.CatherineM@epa.gov or (202) 564-2703.

Sincerely,

Nichole Distefano
Associate Administrator

Enclosure

QUESTIONS FOR THE RECORD TO:

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency

March 17, 2016, Hearing: "Examining Federal Administration of the Safe Drinking Water Act in Flint, Michigan, Part III"
House Committee on Oversight and Government Reform

Chairman Jason Chaffetz
As the result of media FOIA requests made to EPA, large amounts of email correspondence related to the Flint water situation has become available to the public. One of these emails, with the subject line "Clarification," was sent by an EPA employee to various employees of the Michigan Department of Environmental Quality and an EPA colleague. The nature of the email involves the employee supplying information on the dissemination of a draft EPA report to MDEQ officials. This communication is clearly an example of Agency work product.

As indicated in the communication, this email was sent from the employee's personal, nonofficial account on Friday, September 11, 2015. The employee's official email address was not copied at this time. As further indicated in the communication, the employee forwarded this correspondence to her official email account on Monday, November 2, 2015.

The Federal Records Act, specifically 44 U.S.C. §2911, states that an employee of an executive agency may not use a non-official email address unless he or she "forwards a complete copy of the record to an official electronic messaging account of the officer or employee not later than 20 days after the original creation or transmission of the record." In this instance, it appears that the employee waited 52 days before forwarding the email record to her official account. Considering these circumstances, please answer the following questions:

1. *Does EPA believe that this is a violation of the Federal Records Act?*
2. *If not, why not?*
3. *What action does EPA intend to pursue, in accordance with its obligations under 44 U.S.C. §2911, regarding this incident?*

The Committee requests that EPA keep it informed of actions it takes related to this incident.

EPA Response: EPA takes its obligations under the Federal Records Act seriously, and has taken specific and concrete steps to educate and train current employees regarding the preservation of federal records and the November 2014 amendments to the Act. In February 2015, EPA updated its Records Policy to address the new requirements regarding personal messaging accounts. EPA continues to work to reach every employee with annual records training, Quarterly Records Management days, and other resources to assist employees in managing Agency records effectively and efficiently in their work. While the amendments to the Act provide a basis for disciplinary action at the discretion of an employee's supervisor upon a finding of an intentional violation of the forwarding provision of the Act, EPA is taking steps to learn more about the circumstances described in the question above, and, if the employee did fail to forward the message within 20 days, whether this failure was intentional or

inadvertent. The agency will follow up with the employee if, in fact, any steps are necessary or appropriate.

Representative Tammy Duckworth

1. *As you are aware, in late 2015, the National Drinking Water Advisory Council (NDWAC) forwarded recommendations to you for revising the Lead and Copper Rule (LCR). To ensure NDWAC's recommendations are fully accepted and implemented over a sustained period of time, would EPA support codifying these proposed long-term revisions to the LCR?*

EPA Response: EPA is currently evaluating the recommendations received from the National Drinking Water Advisory Council and other concerned stakeholders along with recommendations from the Science Advisory Board on ways to improve public health protections through revisions to the Lead and Copper rule. In evaluating these recommendations, EPA will consider the national experience in implementing the rule as well as local experiences such as the one in Flint, MI, as we develop proposed revisions to the rule. After EPA publishes those proposed revisions for public comment, EPA will consider all comments received from the public before promulgating a final rule.

2. *In Flint, Michigan according to both Marc Edwards and the State of Michigan Auditor General, there are serious and significant problems with sampling site collection under the LCR. Furthermore, LCR issues are not limited to Flint. In the City of Chicago, which scores fairly high on the Environmental Working Group's Big City Water Ratings, a scientific study authored by Miguel Del Toral, and published in the journal Environmental Science & Technology, found deficiencies in the LCR's "...existing regulatory sampling protocol..." require water system operators, such as the Chicago Department of Water Management, to conduct testing that, "...systematically misses the high lead levels and potential human exposure."*

   In addition, a series of investigative reports published by the Chicago Tribune in February 2016 found that since 2003, more than half of the 50 sampling sites tested by the Chicago Department of Water Management were homes owned by Department employees, who administered the tests themselves, and might not be located in high-risk areas. Based on publicly available data, these Chicago Department of Water Management employees not only represent households that are not low-income, but they are individuals with significant knowledge on mitigation techniques that can be taken to reduce lead exposure in tap water.

   The practice of conducting testing on homes owned by water system employees is not limited to Chicago. In 2014, Philadelphia failed to test 50 high-risk homes, with officials claiming it was too difficult to recruit volunteers. Like Chicago, in Philadelphia up to half the homes tested by the city belonged to a water department employee.

a) *Please describe what safeguards and internal controls the EPA requires water system operators to use when electing to have a water system employee administer the testing protocol using the employee's home as a sampling test site to ensure independence, protect against potential testing manipulation or malfeasance, preserve public confidence in the validity of the test results and ensure low-income families are adequately represented in sampling sites.*

EPA Response: Public water systems are required to have sampling plans for microbial, physical and chemical sampling and monitoring that is performed in the public water system and distribution system. Unlike other regulations, which require collecting samples within the distribution system, the Lead and

Copper Rule requires the collection of tap samples within the household. The regulations require that these sample sites must be from homes that have been identified through materials evaluation to be sites that are single family homes that "contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or are served by a lead service line." These sample sites must be from homes that are expected to have a high likelihood of lead in the pipes and plumbing fixtures. There is no requirement that sites come from particular income levels, nor that they exclude water system employees.

The PWS is responsible for ensuring that the submission of samples complies with the sampling protocols identified in the LCR. One such protocol requires that public water systems provide clear instructions to residents on sample collection procedures. Another protocol requires public water systems to review the information and comments provided on the sample sheet to confirm that samples have been collected appropriately before submitting them to the state.

b) *A March 2016 report published by the State of Michigan Office of the Auditor General that found the Michigan Department of Environmental Quality (MDEQ) "...did not independently verify that community water supplies tested sites that met LCR requirements," and reported that an initial MDEQ review of 46 sampling sites determined "...that only 6 (13%) of 46 sites met LCR criteria." These troubling findings indicate non-compliance with the LCR's high-risk criteria. Please describe the policies, practices and procedures that EPA requires primacy agencies use to independently confirm that sampling sites meet the LCR's high-risk criteria.*

EPA Response: The LCR was designed to ensure that samples are collected from locations which have the highest risk of elevated lead concentrations. The rule requires that water systems conduct a materials evaluation to help identify high-risk locations, and requires that the system's sampling pool be comprised of these high-risk locations (Tier 1) sites, if they are available. The water system must submit this sample pool to the state primacy agency, and must notify the state when they change sampling locations. Michigan, like many states, had primary enforcement responsibility under the Safe Drinking Water Act. EPA's regulations at 40 CFR Part 142.10 require that the primacy agency have adequate authority to compel compliance with all NPDWRs, including the sampling requirements of the LCR. Also, 40 CFR 142.14(d)(8) sets forth special primacy requirements related to the LCR.

c) *Please share the number of primacy agency violations of the LCR's high-risk criteria nation-wide that were reported to EPA over the past 10 years.*

EPA Response: A system's failure to collect samples at high risk sites would be one of the potential actions that triggers an LCR monitoring violation. EPA relies on state, tribal, and territory primacy agencies submittals of information to the Safe Drinking Water Information System (https://ofmpub.epa.gov/apex/sfdw/f?p=108:200). The information provided includes monitoring violations.

d) *The Chicago Tribune reports that nearly 80 percent of homes in the City of Chicago are connected to lead service lines, yet the 50 sampling sites selected for tri-annual testing appear to be comprised of closely clustered households in only a handful of neighborhoods, with three testing sites even located on the same block of a Northwest neighborhood.*

Based on this public reporting, it appears that sampling site selection may not comply with LCR requirements nor adequately represent low-income communities that are comprised of households that may not be able to afford expensive lead removal projects on their privately-owned infrastructure. Please share what steps EPA is taking to strengthen LCR testing to ensure that

sampling sites accurately reflect the community and do not discriminate, intentionally or unintentionally, against low income households.

EPA Response: LCR regulations require that sampling be conducted at sites that are considered more likely to have high lead levels. Water systems are also required to return to the same sample sites in each successive monitoring cycle, or to notify the state if they change locations. The reason for sampling at consistent locations is to better evaluate lead levels over time. EPA is carefully considering recommendations from the NDWAC and others on way to strengthen LCR monitoring requirements in its long-term revisions to the LCR.

3. *When testifying before the Council of the City of Philadelphia's Committee on Children and Youth and Committee on Public Health and Human Services, Ms. Debra McCarty, Commissioner of the Philadelphia Water Department, stated:*

> *"The Department's sampling program requires participants to perform an in-home test. Participants are directed to run cold water with the faucet aerator removed and then wait at least six hours before filling the sample bottle. We ask customers to use cold water because it is most commonly used for drinking and to collect water that has stood in the pipes for at least six hours to capture any corrosion issues. We also ask customers to remove the aerator because it can act as a filter, catching particles of lead that accumulate in the pipe.*
>
> *To date, sampling results indicate that Department is effectively controlling corrosion in our customers' plumbing.* ***This testing protocol, most recently used during our 2014 sampling period, was approved by the Pennsylvania Department of Environmental Protection, the primacy agency responsible for regulating drinking water testing in the state****" [emphasis added].*

It appears that the testing protocol used in the City of Philadelphia, and which was approved by the Pennsylvania Department of Environmental Protection, is not consistent with EPA's October 20, 2006 memorandum, "Management of Aerators during Collection of Tap Samples to Comply with the Lead and Copper Rule" or EPA's February 29, 2016 memorandum, "Clarification of Recommended Tap Sampling Procedures for Purposes of the Lead and Copper Rule."

a) *Please confirm whether the testing protocol described in Commissioner McCarty's statement to the City Council complies with the statutory requirements of the Safe Drinking Water Act and the regulatory requirements of the LCR.*

EPA Response: On July 6, 2016 EPA Region 3 wrote to the Pennsylvania Department of Environmental Protection regarding concerns about the Philadelphia Water Department's LCR sampling. The LCR requires first-draw samples, from cold water from a faucet that draws water mainly for consumption, into one-liter bottles, after the water has stood motionless for at least six hours. As explained in the July 6 letter, while the current LCR language does not expressly address aerators and pre-stagnation flushing, EPA issued guidance in October 2006 on aerators and in February 2016 on additional recommended tap sampling procedures. The instructions for the sample collection procedures sent to homeowners were revised in 2006 to be consistent with EPA's memorandum of October 20, 2006, "Management of Aerators during Collection of Tap Samples to Comply with the Lead and Copper Rule." This memorandum clarifies that water systems should not instruct customers to remove or clean aerators prior to or during the collection of tap samples for lead. Aerators are part of some faucet assemblies and are used to introduce air into the water flow. Although not intended to remove inorganic contaminants, screens that are part of the aerator may trap particulate matter or debris within the faucet.

Removal and cleaning of the aerator is advisable on a regular basis. However, if customers are only encouraged to remove and clean aerators prior to drawing a sample to test for lead, the water system could fail to identify lead in the tap water, and thus, fail to take additional actions to reduce exposure.

In February 2016, the EPA issued three communications to enhance oversight of LCR implementation: letters from Administrator Gina McCarthy to Governors and letters from Joel Beauvais to state environmental and public health commissioners and tribal leaders, which are available at https://www.epa.gov/dwreginfo/state-responses-epas-letter-governors-and-state-environment-and-public-health, and a memorandum from Peter Grevatt to EPA Regional Water Division Directors clarifying proper LCR testing protocols and recommendations, available at https://www.epa.gov/dwreginfo/memo-clarifying-recommended-tap-sampling-procedures-lead-and-copper-rule. In their responses to Joel Beauvais' February 29, 2016 letter, most states indicated that they are currently following EPA guidance or are in the process of making changes to conform with EPA guidance.

b) *If the testing protocol does not comply with the statutory or regulatory requirements under the Safe Drinking Water Act or LCR, please share the steps EPA is taking to require all primacy agencies, including the Pennsylvania Department of Environmental Protection, review and revise all policies related to regulating drinking water testing, and more importantly, ensuring the drinking water is safe to consume.*

EPA Response: EPA has increased oversight of state programs to address inconsistencies with how they implement LCR requirements and EPA guidance. As part of these efforts, EPA sent letters on February 29, 2016, to state commissioners to ensure consistency with EPA regulations and guidance. The letters requested that primacy agencies work collaboratively with EPA to address deficiencies and improve transparency and public information regarding the implementation of the rule. EPA has received responses from all state primacy agencies. EPA is conducting follow up meetings with the primacy agencies to confirm the information they provided and to address the concerns they raised. EPA sent a response to governors and state environmental and public health commissioners on July 7, 2016. The letters are available at https://www.epa.gov/dwreginfo/state-responses-epas-letter-governors-and-state-environment-and-public-health. In addition, EPA has communicated specifically with PADEP, and PADEP has informed EPA it has sent the February 29, 2016 updated guidance memo to all of its public water systems

4. *The Flint Water Advisory Task Force's (Task Force) Final Report released in March 2016 accurately concluded, "The Michigan Department of Environmental Quality (MDEQ) failed in its fundamental responsibility to effectively enforce drinking water regulations," and "The Michigan Department of Health and Human Services (MD HHS) failed to adequately and promptly act to protect public health."*

   The Task Force's Final Report confirms that without question, the Administration of Michigan Governor Rick Snyder bears overwhelming responsibility for both creating the Flint water crisis and subsequently failing to fix the problem as children residing in Flint were poisoned by lead contaminated drinking water.

   However, the Task Force's Final Report did not absolve EPA of the agency's statutory responsibility to enforce the Safe Drinking Water Act and the LCR. Specifically, the report states, "Though MDEQ was delegated primacy (authority to enforce federal law), the United States Environmental Protection Agency (EPA) delayed enforcement of the Safe Drinking Water Act (SDWA) and Lead and Copper Rule (LCR), thereby prolonging the calamity." The Task Force detailed its specific concerns with

EPA's actions in presenting its series of four findings (F-32, F-33, F-34, F-35) and three recommendations (R-29, R-30, R-31) for EPA.

a) Please confirm whether EPA concurs that the Task Force's four findings (F-32, F-33, F-34, F-35) are valid, or explain in detail why EPA disagrees with any or all of the findings contained in the Final Report.

F-32. *EPA failed to properly exercise its authority prior to January 2016. EPA's conduct casts doubt on its willingness to aggressively pursue enforcement (in the absence of widespread public outrage). EPA could have exercised its powers under Section 1414 and Section 1431 of the SDWA or under the LCR, 40 CFR 141.82(l).*

EPA Response: Under SDWA Section 1413, MDEQ has primary enforcement responsibility for the public water system program. As such, EPA generally looks to the state primacy agency for drinking water information regarding the owners/operators of regulated public water systems, including systems in Flint. As part of its ongoing oversight, EPA was engaged and began taking action to help address Flint's drinking water crisis well before January 2016. These actions included the formation of an EPA Flint Task Force in October 2015 to provide technical expertise to the City and MDEQ. However, EPA's ability to determine next steps was limited by the information it received from MDEQ and the City.

F-33. *Despite the clear intent of the LCR, EPA has accepted differing compliance strategies that have served to mute its effectiveness in detection and mitigation of lead contamination risks. These strategies have been adopted at water systems and primacy agencies across the country. Though there may be some ambiguity in LCR rule, none of it relates to what MDEQ should have done in Flint. There was and remains no justification for MDEQ not requiring corrosion control treatment for the switch of water source to the Flint River.*

EPA Response: As the primacy agency, MDEQ must ensure that the state's implementation and enforcement of the public water system program is consistent with the federal SDWA and National Primary Drinking Water Regulations (NPDWRs), including the LCR. EPA agrees that MDEQ misinterpreted and misapplied the LCR's corrosion control treatment provisions as it related to Flint's public water system. When EPA realized that MDEQ was misinterpreting the LCR's corrosion control treatment requirements, EPA communicated its concerns to the state primacy agency. In that vein, on November 3, 2015, EPA issued a clarifying memo that articulated the Agency's interpretation of the LCR's corrosion control treatment requirements for large systems in particular.

F-34. *EPA was hesitant and slow to insist on proper corrosion control measures in Flint. MDEQ misinformation notwithstanding, EPA's deference to MDEQ, the state primacy agency, delayed appropriate intervention and remedial measures.*

EPA Response: EPA instituted a Task Force in October 2015 to provide technical assistance to the City of Flint and to help implement the required corrosion control measures in particular. EPA continues to work closely with MDEQ and the City of Flint to oversee the drinking water situation and ensure that treatment is optimized.

F-35. *EPA tolerated MDEQ's intransigence and issued, on November 3, 2015, a clarification memo on the LCR when no such clarification was needed.*

EPA Response: Typically, EPA has a strong relationship with states under SDWA. But looking back on Flint, from day one, the state provided our regional office with confusing, incomplete and incorrect

information. Their interactions with us were intransigent, misleading and contentious. As a result, EPA staff were unable to understand the potential scope of the lead problem until a year after the switch and had insufficient information to indicate a systemic lead problem until mid-summer of 2015. Regarding the November 3, 2015 memo, EPA issued it to help ensure primacy agencies had the proper interpretation of the LCR's corrosion control treatment requirements for large systems – for not only those dealing with Flint, but other large systems nationally.

b) Please share EPA's implementation plan for each Task Force Recommendation (R-29, R-30, R-31). If EPA is not implementing a specific recommendation, please provide a detailed justification.

R-29. Exercise more vigor, and act more promptly, in addressing compliance violations that endanger public health.

EPA Response: In January 2016, EPA's Administrator issued an EPA-wide elevation memo encouraging staff to raise issues of concern to managers and managers to be welcoming of staff concerns and questions.

R-30. *In collaboration with the NDWAC and other interested partners, clarify and strengthen the LCR through increased specificity and constraints, particularly requirements related to LCR sampling pools, sample draw protocols, and LSL replacements—and, more generally, strengthen enforcement protocols with agencies delegated primacy.*

EPA Response: EPA is carefully considering recommendations it received from the National Drinking Water Advisory Council as well as from other concerned stakeholders regarding revisions to the LCR. EPA has also reviewed the recommendations from the Flint Water Advisory Task Force on how to clarify and strengthen the LCR. The EPA will carefully evaluate the recommendations received from the National Drinking Water Advisory Council, the Task Force, concerned stakeholders and, the Science Advisory Board on ways to improve public health protections through revisions to the Lead and Copper rule. After EPA publishes proposed revisions of the rule for public comment, EPA will consider all comments received before promulgating a final rule.

R-31. *Engage Michigan representatives in ongoing LCR revisions and development of enforcement protocols at EPA and MDEQ.*

EPA Response: The EPA intends to continue to seek input from concerned stakeholders in Michigan and other states in developing the revisions to the LCR and will also seek and evaluate all public comments after the proposed rule is published.

c) Please provide specific recommendations on how Congress can strengthen the Safe Drinking Water Act to optimize EPA's statutory authority to better protect public health from harmful contaminants in drinking water and prevent a future Flint Water Crisis.

EPA Response: EPA is aware of a number of legislative efforts to amend the Safe Drinking Water Act, and the Agency welcomes the opportunity to provide technical assistance whenever requested. Effective implementation and oversight of the regulatory requirements necessary to protect public health require cooperation, expertise, and resources at the local, state and Federal levels.

5. *Community water systems face many challenges in reducing the level of lead in drinking water. The cost of implementing certain lead reduction efforts, such as replacing publicly owned portions of lead service lines, often exceed existing resources of system operators at the State, local or Tribal level.*

   Furthermore, middle and low-income homeowners often struggle to afford replacing privately-owned portions of lead service lines, pipes, fittings or fixtures that contain lead – if they are even aware of the need to replace them in the first place.

   To address resource constraints and other challenges related to effectively implementing lead reduction initiatives, would EPA support establishing a grant program that enables it to provide assistance to eligible entities for effective lead reduction projects in the United States (excluding ineffective partial lead service line replacement projects from grant eligibility)?

EPA Response: EPA has been working with primacy agencies and the state drinking water revolving fund programs to help address priority drinking water infrastructure improvements, including replacement of the publically and privately held portions of lead service lines across the country. EPA welcomes the opportunity to provide technical assistance on any proposed legislative language.

Ranking Member Elijah E. Cummings

1. *Lead service lines and plumbing fixtures are common in older cities tike Flint, Michigan. For many years, corrosion control treatments were applied by the Detroit Water and Sewerage Department (DWSD) to drinking water used by the residents of Flint. These treatments deposited a protective coating inside pipes and fixtures that prevented lead from leaching into the water. When the Governor's emergency manager for Flint decided to begin using the Flint River for drinking water in April 2014, the Michigan Department of Environmental Quality (MDEQ) did not require the use of corrosion control treatments. At that time, the population of Flint was about 100,000.*

   How many other state environmental protection departments do not require cities of comparable size to use corrosion control treatments?

EPA Response: EPA has increased oversight of state programs to address inconsistencies in the implementation of the LCR, which requires all large systems (i.e., those serving more than 50,000 persons) to meet the corrosion control treatment requirements in the rule. Systems serving 50,000 or fewer persons must meet corrosion control treatment requirements if the lead or copper action level is exceeded during two 6-month monitoring periods and are required to take actions, which may include installation of corrosion control, if they exceed the action level. On November 3, 2015, EPA issued a memo clarifying that all large drinking water systems are required to maintain optimized corrosion control treatment, including when systems change their drinking water sources. As part of these efforts, EPA sent letters on February 29, 2016, to state commissioners to ensure consistency with EPA regulations and guidance. The letter requested that primacy agencies work collaboratively with EPA to address deficiencies and improve transparency and public information regarding the implementation of the rule. EPA has received responses from all state primacy agencies. EPA is conducting follow up meetings with the primacy agencies to confirm the information provided and address any problems. EPA sent a response to governors and state environmental and public health commissioners on July 7, 2016. The letters are available at https://www.epa.gov/dwreginfo/state-responses-epas-letter-governors-and-state-environment-and-public-health.

2. *On November 25, 2015, EPA's Flint Drinking Water Task Force issued a preliminary assessment to MDEQ with specific requests and recommendations. What is the status of MDEQ's compliance with each of these requests and recommendations?*

EPA Response: EPA's Flint Task Force continues to provide technical assistance to the City regarding SDWA and the implementing regulations, including the Lead and Copper Rule. EPA's January 2016 Safe Drinking Water Act Emergency Order paragraph 52 requires the City of Flint, MDEQ and the State of Michigan to provide written responses to all of the EPA Flint Task Force's requests and recommendations, including those made on November 25, 2015 and subsequent dates. The responses must include all actions Respondents have taken and intend to take in response to those requests and recommendations. The EPA Flint Task Force's requests and recommendations are publicly available at http://www.epa.gov/mi/flint-drinking-water-documents. As required by paragraph 51 of the Order, MDEQ has created a website so the public has access to materials. The latest summary of responses to the EPA Flint Task Force recommendations can be found at http://www.michigan.gov/flintwater/0,6092,7-345-76292_76364-376646--,00.html.

3. *On January 21, 2016, EPA issued an Emergency Administrative Order to the City of Flint, the Michigan Department of Environmental Quality, and the State of Michigan pursuant to Section 143 l of the Safe Drinking Water Act. In your testimony, you stated:*

> *But I did issue an order in January because even after all of this, the order I issued was questioned by this State, by MDEQ, by this State as was that really legally solid. Up until today, they continue to drag their feet.*

a) How did MDEQ and the State of Michigan question the legal authority of EPA to issue this Emergency Administrative Order?

EPA Response: In response to EPA's Emergency Order, on January 22, 2016, MDEQ and the State sent a letter indicating they looked forward to "working cooperatively" with EPA and the City of Flint to protect the health, safety and welfare of Flint residents and ensure safe drinking water. However, in the same letter MDEQ and the State also raised concerns about whether EPA had the authority to order a state and its agencies to take the actions outlined in the Order. Further, in an email from MDEQ to U.S. EPA sent on February 11, 2016 (and attached to the February 19, 206 U.S. EPA Letter to MDEQ and City of Flint), MDEQ said "[w]hile we continue to dispute the legality and efficacy of the order, we are fully committed to the ultimate goal: to ensure the health and safety of Flint's water supply as quickly as possible."[1] The State and MDEQ have reiterated general legal concerns, but have continued to engage with EPA and the City to address the drinking water crisis in Flint.

b) Does MDEQ or the State of Michigan still question the legal authority of EPA to issue this Emergency Administrative Order?

EPA Response: Please see our response to 3.a), above.

c) What is the status of respondents' compliance with each of the items required in the Emergency Administrative Order, including:

- *Item 60, requiring the submission of a written plan demonstrating that the City has the technical, managerial, and financial capacity to operate its water system in compliance with federal law; and*

[1] https://www.epa.gov/sites/production/files/2016-02/documents/epa_letter_to_mdeq_and_city_of_flint_w_attachments_2.19.16.pdf

- *Item 61 requiring, within 15 days, that MDEQ and the State ensure that the City of Flint has "the necessary, capable and qualified personnel required to perform the duties and obligations required."*

EPA Response: EPA review of compliance has been communicated through letters addressed to the City and MDEQ that can be found at http://www.epa.gov/flint/flint-drinking-water-documents. EPA is meeting with the City and MDEQ on a weekly basis to discuss compliance (e.g., weekly phone calls, regularly scheduled in-person meetings). Key issues include adequate staffing for the City's public water system and optimizing corrosion control in the distribution system using the current source water.

- Item 60: This requirement cannot be assessed until Respondents submit a written plan for transition to a new water source in accordance with paragraph 60 in the Order. The timing is based on Respondents' decision to switch water sources.
- Item 61: This requirement has not yet been satisfied. The City has submitted staffing charts, position descriptions and hiring plans. (More information specific to hiring staff is included in the response to 3.d), below.) EPA is assessing both the current needs and future needs to effectuate a change in water source. The MDEQ and State have assisted with these issues.

c) How many additional staff does the City need at the Flint Water Treatment Plant? What qualifications do they need?

EPA Response: On March 28, the City hired a new water treatment plant supervisor, who holds the highest operator certification available in the state. The new water treatment plant supervisor is also acting as the temporary Utilities Administrator. Administration wise, the City hired a Chief of Staff, City Attorney, an assistant City Attorney, a City Engineer, a Chief Financial Officer, and a City Administrator; however the Utilities Administrator and Department of Public Works Director positions remain vacant. Additionally, the City hired two interns and one laboratory technician for the water treatment plant, and are hiring five operators for the water distribution system, with the possibility of hiring two to five more operators. The new hires are trainees, and more experienced operators and lab technicians are necessary for the water treatment plant and distribution system. EPA also believes more foremen are required, as there are only three currently at the water treatment plant.

d) What obligation does the State have to ensure that the City "has the necessary, capable and qualified personnel"?

EPA Response: In its January 2016 SDWA Emergency Order, EPA included express requirements for the State and MDEQ to ensure the City has the personnel needed to ensure the public water system complies with SDWA and the National Primary Drinking Water Regulations.

e) Have the City of Flint and the State of Michigan met this requirement?

EPA Response: If the question refers to paragraph 61 of the Emergency Order, the requirement has not yet been satisfied. EPA's assessment is ongoing.

f) What are the barriers to respondents' full compliance with the Emergency Administrative Order?

EPA Response: It is imperative the City gain the full technical, managerial and financial capacity to operate its public water system in compliance with SDWA. Capacity challenges have been an issue in Flint. While it appears to be moving in the right direction, concerns remain.

AL-16-001-1571

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 25 2016

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to respond to the questions for the record following the April 28, 2016, hearing entitled, "*Examining EPA's Predetermined Efforts to Block the Pebble Mine, Part II.*" Enclosed are the Environmental Protection Agency's responses to the questions.

If you have any further questions, please contact me or your staff may contact Denis Borum at borum.denis@epa.gov or 202-564-4836.

Sincerely,

Nichole Distefano
Associate Administrator

Enclosure

cc: The Honorable Eddie Bernice Johnson
Ranking Member

Committee on Science, Space & Technology
"Examining EPA's Predetermined Efforts to Block the Pebble Mine, Part II"
April 28, 2016

Questions for the Record to:
The Honorable Dennis McLerran, Administrator,
U.S. Environmental Protection Agency, Region 10

Submitted by Ranking Member Eddie Bernice Johnson

1. **Reports in the media, public statements by Pebble, and statements from Members made during the hearing, suggest that your Proposed 404(c) Determination for Bristol Bay bans the Pebble Partnership from building any mine in the region or from filing a 404 permit application.**

   a) **Please clarify the scope of the Proposed Determination and the specific restrictions it places on the proposed Pebble Mine in Bristol Bay.**

   b) **Does EPA's use of its 404(c) authority in this case constitute a ban or "veto" of any mining activity in the defined region?**

   c) **Could there be mining activity in Bristol Bay even with the proposed 404 (c) restrictions on waterways?**

Response: The Bristol Bay watershed is unique, representing one of the Western hemisphere's most productive and vulnerable watersheds. The economic and cultural value of the Bristol Bay watershed is immense: it supports about 14,000 part-time and full-time jobs, and generates an estimated $480 million in direct, annual, economic expenditures and sales. The University of Alaska estimated that the cumulative activities associated with harvesting, processing, and retailing Bristol Bay salmon result in approximately $1.5 billion annually in economic value across the United States.[1] In addition, for over 4,000 years, it has served as a significant subsistence fishery to Alaska Native people, who may be among the last remaining salmon-based, subsistence cultures in the world. On July 21, 2014, after holding numerous public comment meetings that were attended by approximately 2,000 people, and evaluating more than 1.1 million comments that were submitted on the draft Bristol Bay Watershed Assessment, Region 10 issued its proposal to protect one of the world's most valuable salmon fisheries from the effects that could result from the discharge of dredged or fill material associated with the construction and routine operation of a mine at the Pebble deposit. The proposed restrictions are outlined in a document called the Proposed Determination. The Proposed Determination outlines restrictions to avoid unacceptable adverse effects to waters in that area. Effects to waters include the loss of streams, loss of wetlands, lakes, and ponds, or alteration of streamflow in salmon supporting streams.

According to EPA records, losses of this nature and magnitude associated with mining the Pebble deposit as proposed would be unprecedented for the Clean Water Act Section 404 regulatory program anywhere in the nation. Degradation of these aquatic resources is likely to be even more pronounced,

[1] http://www.iser.uaa.alaska.edu/Publications/2013_04-TheEconomicImportanceOfTheBristolBaySalmonIndustry.pdf

given the extensive cumulative impacts expected with successive stages of mine expansion.

This Proposed Determination is not a "veto" or ban on mining activity in the covered area. Rather, this Proposed Determination addresses where and at what levels the discharge of dredged or fill material related to mining the Pebble deposit could result in unacceptable adverse effects on the important water resources near the deposit. Moreover, it does not prevent or preclude Pebble Limited Partnership from filing any permit applications, including a Clean Water Act Section 404 permit application.

Importantly, the Proposed Determination is not a final action. However, even if its restrictions are ultimately finalized, it will not amount to an outright ban on all mining activity; proposals to mine the Pebble deposit that have impacts below each of these restrictions could proceed to the Section 404 permitting process with the U.S. Army Corps of Engineers.

The EPA has consistently demonstrated its willingness to collaborate with federal and state regulatory agencies and mining companies to ensure that projects can move forward in ways that protect water quality and the health of communities.

For over a decade, both Northern Dynasty Minerals and the Pebble Limited Partnership have asserted that submission of a permit application was imminent. The Pebble Limited Partnership has not submitted a permit application, which has been an enormous frustration to many in the Bristol Bay watershed area. At any point over these years, up to today, the Pebble Partnership could apply for a 404 permit with the Corps of Engineers and initiate the NEPA process. Yet the Pebble Partnership has chosen not to submit an application.

2. **Retired EPA Ecologist Phil North was a focus of discussion at the April 28th hearing. Allegations of collusion put forward by Pebble Limited Partnership, and some Majority Members of the Committee, appear to be based on a fundamental misunderstanding of both Mr. North's job responsibilities and the extent to which he could have influence over you and other decision makers at EPA. Specifically, Mr. Tom Collier, the CEO of Pebble, has alleged, in the media, that Mr. North colluded with "anti-mine" organizations, and influenced EPA to conduct a 404(c) action to block the mine.**

   a) **What were Mr. North's job responsibilities? Would he have reason to be in contact with any outside organizations, like Pebble or Native Alaskan tribes, as a result of his work? If so, please describe the nature and purpose of these contacts.**

   b) **Please describe the nature of any interactions you may have had with Mr. North. Specifically, when were you made aware of Mr. North's opinion as to the use of 404(c) to protect the Bristol Bay Watershed, and, how was his opinion communicated to you?**

   c) **Were you aware of anyone else within Region 10 who had an opinion on this issue? If so, did they agree or disagree with Mr. North? Was it common for employees at EPA to have differences of opinion on matters before the Agency? How do these differences of opinions manifest in work products that may have been presented to you or to others within Region 10?**

   d) **Did Mr. North have the authority to initiate the Bristol Bay Watershed Assessment (BBWA) on his own?**

e) **Did Mr. North have the authority to initiate a Section 404(c) action?**

f) **Who has the authority to initiate either the BBWA or the 404(c) process?**

g) **Can you please describe in detail how you came to the decision to conduct the BBWA, and subsequently the Section 404(c) action?**

h) **Did initiating the 404(c) process require you to conduct the Bristol Bay Watershed Assessment first?**

i) **You initiated the 404(c) process in February 2014 regarding the proposed Pebble Mine in Bristol Bay by writing the "15-day letter" to the Pebble Limited Partnership. Under the Clean Water Act's regulatory criteria could you have initiated the 404(c) process in regards to the proposed Pebble Mine in Bristol Bay in 2010 as Mr. North believed that EPA's leadership should have done? If so, why did you choose to proceed as you did?**

Response: The U.S. Army Corps of Engineers authorizes thousands of Section 404 permits every year, and the EPA works with the Corps and developers to resolve environmental concerns so projects can move forward. However, the Clean Water Act, specifically Section 404(c), also authorizes the EPA to prohibit or restrict fill activities if EPA determines a project would have unacceptable adverse effects on fishery areas.

In May of 2010, several federally recognized tribes from the Bristol Bay watershed in Alaska petitioned EPA to use its Clean Water Act Section 404(c) authority to restrict the discharge of dredged or fill material from the proposed Pebble Mine in the watershed. EPA also received similar requests from a diverse group of stakeholders, while others requested that EPA refrain from taking action. The groups that supported EPA's use of 404(c) were deeply concerned that the largest open pit mine in North America could potentially be opened within one of the western hemisphere's most productive and yet vulnerable watersheds.

There was a wide range of views within the Agency about how to proceed and a significant amount of deliberation among EPA staff. We ultimately decided to not initiate EPA's Section 404(c) authority at that time because we wanted to develop a solid understanding of the watershed -- and the potential risks associated with proposed mining activities -- before deciding whether or not to exercise our 404(c) authorities. Instead, on February 7, 2011, consistent with Clean Water Act Section 104, I announced EPA's intent to conduct an ecological risk assessment, the purpose of which was to characterize the biological and mineral resources of the Bristol Bay watershed, to increase understanding of the potential risks of large-scale mining on the region's fish resources, and to inform future decisions by government agencies and others related to protecting and maintaining the chemical, physical, and biological integrity of the watershed.

After three years of study, two rounds of public comment, and independent, external peer review, EPA released the Bristol Bay Watershed Assessment in January 2014. The Bristol Bay Watershed Assessment characterizes the significant ecological resources of the region and describes potential impacts on salmon and other fish from large-scale porphyry copper mining at the Pebble deposit. The Assessment established that the extraction, storage, treatment, and transportation activities associated with building, operating, and maintaining one of the largest mines ever built could pose significant risks to the unparalleled ecosystem that produces one of the greatest wild salmon fisheries left in the world.

After careful consideration of available science in the Assessment and other available information, including extensive materials provided by Northern Dynasty Minerals and Pebble Limited Partnership, I decided to proceed under EPA's Clean Water Act Section 404(c) regulations to initiate a process to protect Bristol Bay resources from the adverse environmental effects of large-scale mining the Pebble deposit. To be clear, in accordance with regular agency practice and policies, I made the decision to conduct the Bristol Bay Watershed Assessment and, subsequently, to initiate the 404(c) process.

The Inspector General recently concluded a 17-month comprehensive evaluation of EPA's Bristol Bay Watershed Assessment and found no evidence of bias in how EPA conducted the Bristol Bay Watershed Assessment. Mr. North was an EPA scientist who lived and worked in Alaska. As part of his job duties, Mr. North was expected to conduct outreach to and engage with federal, state, local, and tribal partners on protection and restoration of wetlands and other aquatic resources. In this capacity, Mr. North was a point of contact for Alaska Native villages and tribes. In the course of his job, and due to his expertise in aquatic resources, Mr. North provided information to tribes and stakeholders about the Clean Water Act and EPA's regulatory authorities. Mr. North was one of many EPA employees who contributed to the Bristol Bay Watershed Assessment. He had no decision-making authority regarding whether EPA would conduct the Bristol Bay Watershed Assessment or proceed with the Clean Water Act Section 404(c) process, and he retired before EPA finalized the Bristol Bay Watershed Assessment and before EPA issued the Proposed Determination.

Committee on Science, Space & Technology
"Examining EPA's Predetermined Efforts to Block the Pebble Mine, Part II"
April 28, 2016

Questions for the Record to:
The Honorable Dennis McLerran, Administrator,
U.S. Environmental Protection Agency, Region 10

Submitted by Representative Esty

1. **Mr. McLerran, many reports in the media and statements by Pebble have suggested that your Proposed Determination regarding the 404(c) in Bristol Bay bans the Pebble Partnership from building any mine in the region or from filing a 404 permit application. As we know, this is not what your Proposed Determination intends.**

   Several mine design scenarios in the final Bristol Bay Watershed Assessment found that the presence of a mine in Bristol Bay would destroy 94 miles of salmon streams and alter 33 miles of other streams within the watershed.

   However, your Proposed Determination released in July 2014 did not ban Pebble from building a mine outright, rather it restricted the degree of damage a mine could cause, containing the damage to 5 miles of salmon spawning streams and less than 1,100 acres of wetlands, lakes or ponds where these fish live.

   a. **Can you help clarify this issue for us? What exactly does your Proposed Determination do?**

   b. **Does the EPA's use of its 404(c) authority work as a ban on any mining activity?**

   c. **Now specifically in Pebble's case, does EPA's use of 404(c) authority "veto" any mining activity in Bristol Bay?**

   d. **Does this step, using 404(c), stop Pebble from filing permit applications?**

   e. **Could there be mining activity in Bristol Bay even with 404(c) restrictions on waterways?**

Response: The Bristol Bay watershed is unique, representing one of the Western hemisphere's most productive and vulnerable watersheds. The economic and cultural value of the Bristol Bay watershed is immense: it supports about 14,000 part-time and full-time jobs, and generates an estimated $480 million in direct, annual, economic expenditures and sales. The University of Alaska estimated that the cumulative activities associated with harvesting, processing, and retailing Bristol Bay salmon result in

approximately $1.5 billion annually in economic value across the United States.[2] In addition, for over 4,000 years, it has served as a significant subsistence fishery to Alaska Native people, who may be among the last remaining salmon-based, subsistence cultures in the world. On July 21, 2014, after holding numerous public comment meetings that were attended by approximately 2,000 people, and evaluating more than 1.1 million comments that were submitted on the draft Bristol Bay Watershed Assessment, Region 10 issued its proposal to protect one of the world's most valuable salmon fisheries from the effects that could result from the discharge of dredged or fill material associated with the construction and routine operation of a mine at the Pebble deposit. The proposed restrictions are outlined in a document called the Proposed Determination. The Proposed Determination outlines restrictions to avoid unacceptable adverse effects to waters in that area. Effects to waters include the loss of streams, loss of wetlands, lakes, and ponds, or alteration of streamflow in salmon supporting streams.

According to EPA records, losses of this nature and magnitude would be unprecedented for the Clean Water Act Section 404 regulatory program anywhere in the nation. Degradation of these aquatic resources is likely to be even more pronounced, given the extensive cumulative impacts expected with successive stages of mine expansion.

This Proposed Determination is not a "veto" or ban on mining activity in the covered area. Rather, this Proposed Determination addresses where and at what levels the discharge of dredged or fill material related to mining the Pebble deposit could result in unacceptable adverse effects on the important water resources near the deposit. Moreover, it does not prevent or preclude Pebble Limited Partnership from filing any permit applications, including a Clean Water Act Section 404 permit application.

Importantly, the Proposed Determination is not a final action. However, even if its restrictions are ultimately finalized, it will not amount to an outright ban on all mining activity; proposals to mine the Pebble deposit that have impacts below each of these restrictions could proceed to the Section 404 permitting process with the U.S. Army Corps of Engineers.

The EPA has consistently demonstrated its willingness to collaborate with federal and state regulatory agencies and mining companies to ensure that projects can move forward in ways that protect water quality and the health of communities.

For over a decade, both Northern Dynasty Minerals and the Pebble Limited Partnership have asserted that submission of a permit application was imminent. The Pebble Limited Partnership has not submitted a permit application, which has been an enormous frustration to many in the Bristol Bay watershed area. At any point over these years, up to today, the Pebble Partnership could apply for a 404 permit with the Corps of Engineers and initiate the NEPA process. Yet the Pebble Partnership has chosen not to submit an application.

[2] http://www.iser.uaa.alaska.edu/Publications/2013_04-TheEconomicImportanceOfTheBristolBaySalmonIndustry.pdf

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 3 0 2016

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Committee's questions for the record following the April 13, 2016, hearing titled "Flint Water Crisis: Impacts and Lessons Learned."

I hope this information is helpful to you and the members of the Committee. If you have further questions, please contact me or your staff may contact Cathy Davis in the EPA's Office of Congressional and Intergovernmental Relations at Davis.CatherineM@epa.gov or (202) 564-2703.

Sincerely,

Tristan Brown
Deputy Associate Administrator
Congressional Affairs

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Joseph R. Pitts
Chairman
Subcommittee on Health
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

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Sincerely,

Tristan Brown
Deputy Associate Administrator
Congressional Affairs

Enclosure

QUESTIONS FOR THE RECORD TO:

Joel Beauvais
Deputy Assistant Administrator for the Office of Water
U.S. Environmental Protection Agency

April 13, 2016, Hearing: "Flint Water Crisis: Impacts and Lessons Learned"
House Committee on Energy and Commerce
Subcommittee on Environment and the Economy and Subcommittee on Health

The Honorable Morgan Griffith

Articles published this past weekend by the AP tell stories of cities like Galesburg, Illinois and Portland, Oregon where water systems with lead levels at or above the EPA action level of 15 parts per billion (ppb) say that these lead levels are not a concern and that position is backed up by the local health department.

1. *What is your response to water systems that say the water is safe to drinking even though the action level matches or exceeds the EPA action level?*

EPA Response: The Safe Drinking Water Act (SDWA) requires the EPA to determine the level of contaminants in drinking water at which no adverse health effects are likely to occur with an adequate margin of safety. These non-enforceable health goals, based solely on possible health risks, are called maximum contaminant level goals (MCLGs). The MCLG for lead is zero. The EPA has set this level based on the best available science, which shows there is no safe level of exposure to lead.

For most contaminants, the EPA sets an enforceable maximum contaminant level (MCL) based on the MCLG. MCLs are set as close to the MCLGs as possible, considering cost, benefits and the ability of public water systems to detect and remove contaminants using suitable treatment technologies. However, because lead contamination of drinking water often results from corrosion of the plumbing materials belonging to water system customers, the EPA established a treatment technique rather than an MCL for lead. A treatment technique is an enforceable procedure or level of technological performance which water systems must follow to ensure control of a contaminant.

The treatment technique regulation for lead, the Lead and Copper Rule (LCR), requires water systems to control the corrosivity of the water. The regulation also requires systems to collect tap samples from sites served by the system that are more likely to have plumbing materials containing lead. If more than 10 percent of tap water samples exceed the lead action level of 15 parts per billion, then water systems are required to take additional actions to ensure control of lead.

2. *What changes will EPA make to improve enforcement at water systems with long term elevated lead levels?*

EPA Response: In the wake of the drinking water situation in the City of Flint, the EPA is reviewing public water systems with lead action level exceedances. Under the LCR, if a system's tap samples exceed the action level, the system is required to take specific actions. If it does not take those actions,

then the system is in violation. The EPA continues to work with state, tribal and territorial co-regulators to determine whether the required actions have been performed at these systems.

Current Lead and Copper Rule (LCR) compliance sampling requires that a minimum of 50% of sampled homes have lead service lines. It was recently reported that Philadelphia has over 50,000 lead service line homes and yet the majority of the samples it collected in 2014 for compliance with the LCR came from Tier 3 homes (homes without lead service lines). EPA Region 3 stated publicly that this is ok.

3. Isn't what Philadelphia is doing a clear violation of the LCR?

EPA Response: Pennsylvania Department of Environmental Protection (PADEP), which is the primacy regulatory agency in Pennsylvania, informed the EPA that it had authorized the sampling pool makeup used by the Philadelphia Water Department (PWD) and had accepted the subsequent sampling results based on EPA and Commonwealth guidance. The EPA has been in verbal and written communication with PADEP and PWD to ensure that the health of the citizens of Philadelphia is being protected and that new sample data will be obtained this year to determine the status of PWD's lead levels. On July 7, PWD announced a plan to conduct lead and copper sampling from July to December 2016 using all appropriate EPA sampling guidance and where 50 percent of the sites sampled are from homes with lead service lines. The EPA considers PWD's plan to be a positive step toward building confidence in the Department's commitment to protecting public health.

The EPA's review of all available water quality data did not identify a pattern of elevated lead levels in PWD drinking water or any changes in water chemistry. The 90th percentile of those 2014 samples that were from tier 1 sites (45 samples) was 6 ppb. Blood lead levels in Philadelphia children have been consistently decreasing during this period.

4. Do you know why Philadelphia was unable to obtain samples from those 50,000 homes?

EPA Response: In their "2014 – Sample Site Location Plan" memorandum to PADEP, PWD identified efforts to recruit customers to participate in the 2014 monitoring program. PWD contacted a total of 8,340 customers to participate in the 2014 round of sampling. Only 334 of those customers applied to participate in the sampling program, and only 134 samples in total were collected and returned to PWD for analysis.

5. Do you know what their justification was for not doing so?

EPA Response: PWD notes difficulties retaining participants in the program, which is an issue common to many large public water systems. PWD notes that many participants have discontinued participating in LCR sampling due to low lead results, the inconvenience of sampling, and moving, and that only 26 of the 100 locations sampled in the first 1992 monitoring round participated during 2014 sampling.

6. Do water agencies regularly report numbers that don't meet this 50% requirement?

EPA Response: Under 40 CFR §141.86(a), all sites used for first draw tap sampling must be Tier 1 sites unless there are an insufficient number of sites in the system. If the water system did not obtain enough

samples from Tier 1 sites but has more Tier 1 sites in the system, then they need to identify and sample at additional Tier 1 sites. Tier 1 sampling sites are defined as locations with "copper pipes with lead solder installed after 1982 or lead pipes, and/or served by a lead service line." Not all Tier 1 sites must be from single family homes with lead service lines, but if there are lead service lines, 50 percent of the Tier 1 sampling sites must be lead service line sites. The EPA does not have information on the number of water systems that do not meet the 50 percent lead service line requirement.

7. *What is EPA doing to ensure that the samples collected from communities are in fact from Tier 1 and Tier 2 homes – and in compliance with the Lead and Copper Rule?*

EPA Response: Water systems are required to develop a pool of sample sites that meet the tiering requirements. Systems must notify the state when they change a sampling site location. The EPA has encouraged states and water systems to post information about their lead service lines on their websites to increase transparency.

The Honorable Susan Brooks

1. *How do the U.S. EPA and environmental state agencies educate homeowners, businesses, and schools on what their responsibilities are when it comes to water-related infrastructure – whether it's in the ground or internal infrastructure, such as old faucets and drinking fountains? What is your agency doing to inform the public of best practices when they have lead service pipes delivering water to their homes?*

EPA Response: The EPA has established several regulatory requirements that require water systems to provide consumers with information on their drinking water supply. These requirements include public education, public notification and Consumer Confidence Reports.

One specific example required by the LCR is Lead Consumer Notices. After a water system takes samples for lead under the requirements of 40 CFR §141.86, it must provide the individual lead tap sampling results to the persons served by the water system at the specific sites that were sampled. This information must be provided within 30 days of getting the results, regardless of whether the results exceed the lead action level.

The LCR also requires public education. In the event that a public water system exceeds the lead action level of 15 parts per billion, the water system must distribute materials designed to educate consumers about lead health effects, sources, and steps to minimize exposure. The EPA also requires water systems to annually publish a Consumer Confidence Report and deliver this report to their customers. A Consumer Confidence Report is an annual water quality report that includes information on source water, the levels of detected contaminants, and compliance with drinking water rules. This report must also include an educational statement about lead in drinking water.

In addition to these regulatory requirements, the EPA developed the *3Ts for Reducing Lead in Drinking Water in Schools* to assist schools with lead in drinking water prevention programs. It is intended for use by school officials responsible for the maintenance and/or safety of school facilities, including drinking water. The document introduces the 3Ts for reducing lead in drinking water, which include: training, testing, and telling. The 3Ts guide can be found at: http://www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf

2. *In the 25 years since the lead rule was created, the U.S. EPA has yet to define an acute level for lead. The authority under the rule allows a maximum contaminant level of 15 parts per billion, while the CDC says there is no safe level for lead. How do you reconcile the difference here, and what is your suggestion on an acute level being defined in the updated federal lead and copper rule?*

EPA Response: The LCR did not establish a maximum contaminant level of 15 parts per billion. The SDWA requires the EPA to determine the level of contaminants in drinking water at which no adverse health effects are likely to occur with an adequate margin of safety. These non-enforceable health goals, based solely on possible health risks are called maximum contaminant level goals (MCLGs). The MCLG for lead is zero. The EPA has set this level based on the best available science which shows there is no safe level of exposure to lead.

For most contaminants, the EPA sets an enforceable maximum contaminant level (MCL) based on the MCLG. MCLs are set as close to the MCLGs as possible, considering cost, benefits and the ability of public water systems to detect and remove contaminants using suitable treatment technologies. However, because lead contamination of drinking water often results from corrosion of the plumbing materials belonging to water system customers, EPA established a treatment technique rather than an MCL for lead. A treatment technique is an enforceable procedure or level of technological performance which water systems must follow to ensure control of a contaminant.

The EPA appreciates the need for additional accurate, timely and understandable information that will inform water systems and their customers about risks associated with lead levels in their water. The agency is currently considering recommendations from its National Drinking Water Advisory Council on potential changes to the rule that could help improve protection of public health, including a recommendation to establish a Household Action Level that would require public water systems to notify the consumer and the local health department of sample results over that level. The EPA is currently evaluating methodologies for deriving such a level.

3. *With regards to the Federal lead and copper rule, based on the letters the U.S. EPA received from commissioners of environmental agencies across the nation, have you seen common trends from states? Do you believe states are adequately complying with the existing rule?*

EPA Response: Every state has responded to our letter and has provided information on how they are ensuring consistency with the LCR and EPA guidance. In addition, many states have provided examples of how they are promoting transparency at the state and public water system level.

Virtually all of the state responses expressly confirmed that state protocols and procedures are fully consistent with LCR and applicable EPA guidance, including protocols and procedures for optimizing corrosion control. The EPA sent a response to governors and state environmental and public health commissioners on July 7, 2016. The letters are available at https://www.epa.gov/dwreginfo/state-responses-epas-letter-governors-and-state-environment-and-public-health. The EPA is following up with every state to better understand how these protocols and procedures are being used to address lead and copper issues at individual drinking water systems, and how the EPA can best assist states and local communities with implementation of the rule.

While many states provided examples of implementation activities that go beyond the minimum rule requirements, challenges still remain. Many states identified challenges such as incomplete lead service line inventories, and difficulties with posting individual lead samples because of limited IT resources

and concerns with privacy and security. The EPA believes this is an opportunity to learn and identify how other states and water systems have overcome these challenges. The agency will continue to work closely with the states to ensure that the proper steps are being taken to implement the current rule and protect the public from harmful exposures to lead and copper in drinking water.

4. *What new standards regarding public education and notification do you suggest be incorporated into the updated lead and copper rule?*

EPA Response: The EPA is evaluating ways to provide enhanced public education under the LCR, which includes evaluating the recommendations submitted by the National Drinking Water Advisory Council.

The Honorable Paul Tonko

1. *As EPA works on the next iteration of the Drinking Water Infrastructure Needs Survey and Assessment, how will the priority of lead service line replacement be factored in?*

EPA Response: The Drinking Water Needs Survey and Assessment reflects lead service line replacement needs reported by water systems and for which the systems have adequate documentation. This has been included in the Survey since it was first conducted in 1995. It does not include the need for replacing all lead service lines in the country. The 2015 survey seeks to estimate the infrastructure investment need associated with DWSRF eligible projects that water systems plan to undertake from January 1, 2015 through December 31, 2034, including lead service line replacement.

2. *Now that many utilities have committed to replace these lines over the next two decades, which coincides with the scope of the assessment, do you believe lead line replacement needs to be given additional consideration when calculating national needs? Would inclusion of lead line replacement in this survey help to produce results that more accurately reflect the needs of communities?*

EPA Response: The Drinking Water Needs Survey fully reflects the documented lead service line replacement needs reported by systems participating in the survey in the agency's needs estimates based on the survey data. The survey is carefully designed to yield statistically reliable estimates of the needs of all systems. In order to ensure that it is collecting the most reliable data possible, the EPA will continue to encourage water systems and states to improve their asset inventories, particularly for any lead service lines.

3. *Maximum contaminant levels (MCLs) are based on health effects and feasibility. An action level is used to determine when certain treatment technique actions are needed. The Lead and Copper Rule Working Group suggested a household action level to alert residents and health departments when lead levels are high enough that infant formula made from the drinking water is likely to result in an elevated blood lead level. I understand that creating such a level would require peer review and public comment, but is EPA still committed to developing a household action level for lead? If so, what is the status?*

EPA Response: The EPA is evaluating the National Drinking Water Advisory Council's recommendation to include a Household Action Level in the revised Lead and Copper Rule. The agency is working to identify the best scientific approach to determine a level of lead in drinking water that public health officials could use to intervene to make sure that residents who could be at risk are made aware as soon as possible. A public peer review process would be included as a part of any effort to develop a health-based action level for lead in drinking water.

The Honorable G. K. Butterfield

Mr. Beauvais, it is my understanding that since 2011 the EPA has received public comments related to the Long-Term Revisions of the Lead and Copper Rule.

1. *Mr. Beauvais, what are some of the environmental justice concerns expressed at the 2011 public meeting and subsequent comment period related to the Long-Term Revisions of the Lead and Copper Rule?*

EPA Response: The EPA remains committed to assuring equitable public health protection for all consumers of water systems. A particular concern for the lead and copper rule is the ability to conduct full lead service line removals, given the shared ownership of lead service lines in many communities across the country. Disadvantaged consumers may not be able to afford the cost of replacing their portion of a lead service line. The agency will give careful consideration to this important issue in developing the revisions to the Lead and Copper Rule (LCR).

2. *What has the EPA done in response to those comments?*

EPA Response: The EPA continues to evaluate actions that water systems can take to assure that economically disadvantaged families are not disproportionately exposed to lead. The agency has clarified that Drinking Water State Revolving Funds (DWSRFs) can be used by water systems to help pay for replacement of privately owned lead service lines.

3. *Mr. Beauvais, why has it taken so long for EPA to make recommendations or implement policies that reflect the comments received at this public meeting?*

EPA Response: The LCR revisions seek to address an enormously complex and economically significant problem with publicly and privately owned infrastructure in this country. Improving the public health protections under this rule must be done in a manner that is feasible for the 68,000 public water systems that are subject to the LCR and the states which oversee implementation. Therefore, the EPA has been working with stakeholders under the National Drinking Water Advisory Council to identify improvements that are feasible and will improve public health protection.

Mr. Beauvais, it is clear that Congress must reauthorize the Drinking Water State Revolving Fund. The SRF is important to support infrastructure improvements and maintenance and key to protecting public health.

4. *I am concerned that states have sole flexibility to identify a Project Priority List for SRF funds. It's my understanding that the North Carolina Department of Environmental Quality (NCDEQ) considers the need for the project, the public health and environmental benefits, the applicant's utility system management, and project affordability as the criteria for ranking projects. How can Congress better ensure that disadvantaged communities are prioritized in the awarding of SRF resources?*

EPA Response: Under the DWSRF, states have statutory authority, with final approval of the EPA, to create prioritization criteria. The SDWA establishes three priorities that a state must use, to the maximum extent practicable, for ranking projects for DWSRF assistance (in this order):

1. Most serious risks to human health
2. Compliance with SDWA regulations
3. Affordability criterion (established by states for water systems most in need on a per household basis)

Although the program gives the states considerable flexibility to tailor the program to meet their needs and priorities, the affordability criterion ensures that disadvantaged communities have priority to receive funding.

It should be noted that the SDWA prohibits states from providing assistance to a water system that the state determines lacks technical, managerial and financial capacity to ensure compliance with the SDWA, unless the assistance will ensure compliance or the water system agrees to make changes as determined necessary by the state. Although many disadvantaged communities lack such capacity for infrastructure loans, the State Revolving Fund program allows states to provide assistance through "set-asides" funding. Services that can be provided by set-aside funding include, but are not limited to: technical assistance to scope and diagnose problems, operator certification and training, project planning and design for small systems, and assistance with preparing an application for an infrastructure loan. This assistance will enable communities to develop the capability required to obtain infrastructure assistance. Since 1997, North Carolina has reserved nearly $108 million, or about 24 percent, of its federal DWSRF capitalization grants for these and other non-infrastructure "set-aside" activities.

The DWSRF program provides other mechanisms that enable states to provide assistance to disadvantaged communities. The SDWA allows a state, at its option, to establish a disadvantaged communities program. Under such a program, the state may provide up to 30 percent of its SRF capitalization grant, awarded by the EPA to the state, as additional subsidy to communities that the state defines as disadvantaged and meet the requirements to use SRF funds.

In the annual appropriations laws from 2010 onwards, Congress has required states to utilize specified percentages of their DWSRF capitalization grants to provide additional subsidization to assistance recipients (available to any recipient, not necessarily disadvantaged communities). Additional subsidization can take the form of principal forgiveness, negative interest rates or grants. For example, in FY 2015, the appropriations bill required states to provide between 20 and 30 percent of their capitalization grants as additional subsidization. In FY16, the Congressional additional subsidization requirement is 20 percent. Recently, North Carolina has directed funds from this Congressionally-mandated subsidy towards communities the state defines as "disadvantaged."

In addition, states may also extend the repayment term for disadvantaged communities from the typical DWSRF 20-year repayment term to a repayment term of up to 30 years.

Mr. Beauvais, it is my understanding that EPA requires sanitary surveys of community water systems every three years and of non-community water systems every five years.

5. *Mr. Beauvais, can you describe what is involved in a sanitary survey of a water system?*

EPA Response: A sanitary survey is an on-site review of the water source, facilities, equipment and maintenance of a public water system that evaluates the adequacy of those components for producing and distributing safe drinking water. State SDWA primacy agencies are required to conduct sanitary surveys of all public water systems with a minimum frequency. Sanitary surveys are required at least every three years for community water systems and at least every five years for non-community water systems. Sanitary surveys must address a minimum of eight elements as applicable to the public water system. Those elements are:

1. Source
2. Treatment
3. Distribution systems
4. Finished water storage
5. Pumps, pump facilities and controls
6. Monitoring, reporting and data verification
7. System maintenance and operation
8. Operator compliance with state requirements (Operator certification, training and oversight are regulated under state requirements, EPA oversight is limited to ensuring a program is in place in each state)

State primacy agencies are required to have the authorities to require public water systems to correct significant deficiencies identified by the state, and failure to correct those deficiencies can result in enforcement actions under the SDWA.

6. *Mr. Beauvais, this seems like the type of review that the public should be able to count on every year, yet the NCDEQ has indicated that those surveys are not required and the agency does not allocate the resources to ensure surveys occur annually. Has the EPA considered increasing frequency required for sanitary surveys?*

EPA Response: The EPA has established a minimum frequency and scope for sanitary surveys in recent regulatory efforts. Sanitary surveys have historically been a part of all state drinking water oversight programs and recent EPA efforts were intended to ensure national consistency in those programs. Sanitary surveys require significant resources in staff and equipment and, in many cases, extensive staff travel. There are states with thousands of small public water systems in rural areas and in remote areas accessible only during certain times of the year. Sanitary surveys for very large public water systems may require a week or more and several state staff. The EPA encourages states to conduct sanitary surveys more frequently and some states do so. The current sanitary survey frequencies attempt to balance the resources needed for these surveys with the public health protection provided. The EPA has begun an effort to provide additional training and technical assistance for state primacy agency staff conducting sanitary surveys.